

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. M118392
(BALLOT MEASURE 37) OF)
Wallace J. and Marcelline A. Thompson,)
Steve J. and Tonya Thompson, and)
Duane and Connie Meyer, CLAIMANTS)

Claimants: Wallace J. and Marcelline A. Thompson, Steve J. and Tonya Thompson,
Duane and Connie Meyer, (the Claimants)

Property: Tax lots 600 and 700, T 2S, R 4E, S 6, Clackamas 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 the claimants' division and residential development of the subject property: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660 division 33. These laws will not apply to Wallace and Marcelline Thompson's use of tax lot 600 only to the extent necessary to allow them a use of the property permitted at the time they acquired it in 1966 and to Wallace and Marcelline Thompson's use of tax lot 700 only to the extent necessary to allow them a use of the property permitted at the time they acquired it in 1952. These laws will not apply to Steve and Tonya Thompson's division and development of tax lots 600 and 700, and Duane and Connie Meyer's division and development of tax lot 700 only to the extent necessary to allow them a use permitted at the time they acquired an interest in those tax lots on August 7, 1975.

2. The action by the State of Oregon provides the state's authorization to Wallace and Marcelline Thompson to use tax lot 600, subject to the standards in effect on July 1, 1966; and to Steve and Tonya Thompson to use tax lots 600 and 700 and to Duane and Connie Meyer to use

tax lot 700, subject to the standards in effect on August 7, 1975. On August 7, 1975, the property was subject to compliance with the statewide planning goals, as discussed above.

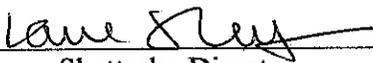
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first 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 ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

4. Any use of the property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in Conditions 1 through 3 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 property, it may be necessary for them to obtain a decision under ORS 197.352, from a 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 Deputy 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.

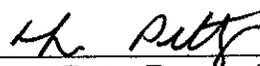
FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD

Dated this 14th day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 14th day of March, 2006.

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 293.316:** Judicial review under ORS 293.316 may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review under ORS 293.316 is pursuant to the provisions of ORS 183.482 to the Court of Appeals.
2. **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 and the Circuit Court in the county in which you reside.
3. **A cause of action under ORS 197.352:** A present owner of the property, or any interest therein, may file a cause of action in the Circuit Court for the county where the property is located, if a land use regulation continues to apply to the subject property more than 180 days after the present owner made a written demand for compensation.

(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.”

**BALLOT MEASURE 37 (ORS 197.352)
CLAIM FOR COMPENSATION**

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

March 14, 2006

STATE CLAIM NUMBER: MI18392

NAMES OF CLAIMANTS: Wallace J. and Marcelline A. Thompson
Steve J. and Tonya Thompson
Duane and Connie Meyer

MAILING ADDRESSES: 29420 Southeast Highway 212 (Duane and
Connie Meyer) and
29590 Southeast Highway 212 (Wallace and
Marcelline)
Boring, Oregon 97009

Steve and Tonya Thompson
PO Box 2174
Roseburg, Oregon 97470

PROPERTY IDENTIFICATION: Township 2S, Range 4E, Section 6,
Tax lots 600 and 700
Clackamas County

DATE RECEIVED BY DAS: May 6, 2005

180-DAY DEADLINE: March 21, 2006¹

I. SUMMARY OF CLAIM

The claimants, Wallace J. and Marcelline A. Thompson; Steve and Tonya Thompson; and Duane and Connie Meyer seek compensation in the amount of \$1.4 million for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain private real property². The claimants desire compensation or the right to divide one parcel of 5.17 acres (tax lot 600) into 15 to 20 parcels (average lot size approximately one-quarter acre); and to divide the second parcel of 16.08 acres (tax lot 700) into 16 approximately

¹ This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Measure 37 was suspended during the pendency of the appeal of Macpherson v. Dep't of Admin. Servs., 340 Or ___, 2006 Ore. LEXIS 104 (February 21, 2006).

² Claimants submitted two state Measure 37 claims for two tax lots adjoining one another. For purposes of this staff report, the state is considering both claims as one.

one-acre parcels. The total number of desired parcels ranges between 31 to 36 on the total 21.25 acre-property. The property is located at 29420 (tax lot #700) and 29590 (tax lot #600) Southeast Highway. 212, near Boring, in Clackamas 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. 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 the claimants' division of the property for residential development: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands), ORS 215, and OAR 660, division 33. These laws will not apply to the claimants only to the extent necessary to allow Wallace and Marcelline Thompson a use of the property permitted at the time they acquired it on July 1, 1966, and to allow Steve and Tonya Thompson and Duane and Connie Meyer a use of the property permitted at the time they acquired it on August 7, 1975. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On May 25, 2005, 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.³

This comment is relevant to whether the restriction of the claimants' use of the property reduces the fair market value of the property. More specifically, the comment offers a list of items presumed by the commenting party to be critical in any analysis to determine loss of value. This comment has been considered by the department in the preparation of this report. The comment also asserts that a waiver is not transferable and declares that state agencies cannot waive state statutes.

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

³ The 10-day notice period was suspended for 139 days during the pendency of the *Macpherson v. Dep't of Admin. Servs.*, 340 Or __, 2006 Ore. LEXIS 104 (February 21, 2006), which suspended all Measure 37 deadlines.

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 May 6, 2005, for processing under OAR 125 division 145. The claim identifies local zoning provisions, ORS 215 and OAR 660 division 33 as laws that restrict the use of the property as the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37, are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

Conclusions

The claim has been submitted within two years of December 2, 2004; the effective date of Measure 37, based on land use regulations 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

Two of the claimants, Wallace J. and Marcelline A. Thompson, acquired Tax Lot # 700 on September 20, 1952 and Tax Lot # 600 on July 1, 1966, as reflected by a deed and a contract submitted with the claim.⁴ On August 7, 1975, two contracts each conveyed a one-third interest in the subject property from Wallace and Marcelline Thompson to Steve and Tonya Thompson and Duane and Connie Meyer. In 1987, Wallace and Marcelline Thompson deeded their one-third interest in tax lot 700 to Duane and Connie Meyer, and, on the same date, the Meyers deeded their one-third interest in tax lot 600 to Wallace and Marcelline Thompson. Steve and Tonya Thompson maintained their one-third interest in each tax lot.

A copy of two tax statements from the Clackamas County Tax Assessor's Office for the 2004-05 tax year indicates that Wallace and Marcelline Thompson and Steve and Tonya Thompson are

⁴ The claim states Wallace and Marcelline Thompson acquired the property from Ms. Thompson's parents, the Cardens, who acquired the property in the 1940s.

the current owners of tax lot 600; and Steve and Tonya Thompson and Duane and Connie Meyer are the owners of tax lot 700.

Conclusions

Claimants Wallace and Marcelline Thompson are “owners” of tax lot 600, as that term is defined by ORS 197.352(11)(C), as of July 1, 1966. Steve and Tonya Thompson are “owners” of tax lot 600, as that term is defined by ORS 197.352(11)(C), as of August 7, 1975. Steve and Tonya Thompson together with Duane and Connie Meyer are “owners” of tax lot 700, as that term is defined by ORS 197.352(11), as of August 7, 1975. Wallace and Marcelline Thompson are “family members” of claimants Steve and Tonya Thompson and Duane and Connie Meyer as that term is defined in ORS 197.352(11)(A).

2. The Laws that are the Basis for this Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimant’s 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 claimant or a family member acquired the property.

Findings of Fact

The claim states that the county’s “EFU-20 and EFU-80 (zones) strictly limits use” of the subject properties. Additional information submitted by the claimants cites provisions of OAR 660 division 33 and ORS 215 for minimum lot size, land divisions, and number of dwellings allowed on agricultural land as the laws that restrict the use of the property.

The claim is based on Clackamas County’s current EFU zone and the applicable provisions of state law that require such zoning. The claimants’ property is zoned EFU as required by Goal 3, in accord with OAR 660 division 33 and ORS 215 because the claimants’ property is “agricultural land” as defined by Goal 3.⁵ Goal 3 became effective on January 25, 1975, and required that agricultural lands, as defined by the goal, be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284, 215.780 and OAR 660 division 33 as applied by Goal 3, do not allow the subject property to be divided into parcels less than 80 acres and establish standards for allowing the existing or any proposed parcels to have farm or non-farm dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2003 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

⁵ The claimant’s property is “agricultural land” because it contains Natural Resources Conservation Service (NRCS) Capability Class I-IV Soils. (See NRCS Web Soil Survey: www.websoilsurvey.nrcs.usda.gov.)

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. Subsequent amendments to comply with HB 3326 (Chapter 704, Oregon Laws 2001, and effective January 1, 2002,) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

Statewide Planning Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses and became effective on January 25, 1975. The claimants' desire to divide parcels ranging in size from one-quarter acre to one acre would implicate Goal 14.

Claimants Wallace and Marcelline Thompson acquired the property in 1952 and in 1966, prior to the establishment of the statewide planning goals and their implementing statutes and rules. At those times, the property was not zoned.

Conclusions

Lot size and dwelling standards established by Goal 3 and provisions applicable to land zoned EFU in ORS 215 and OAR 660 division 33 were all enacted after Wallace and Marcelline Thompson acquired the property (both tax lots) in 1952 and 1966, and do not allow the division of the property, thereby restricting the use of the property relative to the uses allowed when the property was acquired.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimants have identified. There may be other laws that currently apply to the claimants' use of the 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 what laws apply to a use of 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 any land use regulation 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 1.4 million (\$200,000 for tax lot 600 and \$1.2 million for tax lot 700) reduction in value of the property as a result of current regulations. There is no certified appraisal or other documentation to substantiate this estimate.

Conclusions

As explained in section V.(1) of this report, Wallace and Marcelline Thompson acquired the subject property on September 20, 1952 and on July 1, 1966. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of their subject properties in a manner that reduces its fair market value. Based on the findings and conclusions in section V.(2) of this report, laws adopted since the claimants or claimants' family acquired the property restrict division of the subject property. The claimants estimate the reduction in value due to the restrictions to be \$1.4 million.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that there has been some reduction in the fair market value of the subject property as a result of land use regulations enacted or enforced by the Commission or the department.

4. Exemptions under ORS 197.352(3)

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

Findings of Fact

The claim is based on state land use regulations that restrict the use of the property relative to what would have been allowed in 1952 and 1966 when the property was acquired by Wallace and Marcelline Thompson. These provisions include Statewide Planning Goal 3 (Agricultural Lands) and applicable provisions of ORS 215 and OAR 660, division 33, which Clackamas County has implemented through its EFU zone. None of these laws appear to be exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimants or their family acquired the property.

Conclusions

Without a specific development proposal for the property, it is not possible for the department to determine what laws 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 does appear that the general statutory, goal and rule restrictions on residential development and use of farmland apply to the claimants Wallace and Marcelline Thompson's' use of the property, and for the most part these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimants acquired the property are exempt under ORS 197.352(3)(E) and will continue to apply to the claimants' use of the property. There may be other laws that 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 what laws apply to a use of property until there is a specific proposal for that use. When the claimants seek a building or development permit to

carry out a specific use, it may become evident that other state laws apply to that use. And, 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 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 their claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the 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 a law that restricts 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 current owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the director 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 in this report, laws enforced by the Commission or the department restricts the division of the subject property into 31-36 parcels and the development of a dwelling on each parcel. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$1.4 million. Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount that the claimants demand for compensation. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the 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 Wallace and Marcelline Thompson to use tax lot 600 for uses permitted at the time they acquired the property on July 1, 1966; to allow Steve and Tonya Thompson to use tax lots 600 and 700 for uses permitted at the time they acquired an interest in the property on August 7, 1975; and to allow Duane and Connie Meyer to use tax lot 700 for a use permitted when they acquired an interest in the parcel on August 7, 1975.

When claimants Steve and Tonya Thompson and Duane and Connie Meyer acquired an interest in the property on August 7, 1975, it was zoned RA-1, which required a minimum 1-acre lot size. However, the county's RA-1 zone that applied to the property at that time was not acknowledged by the Commission under the standards for state approval of local comprehensive plans and land use regulations pursuant to ORS 197.250 and 197.251. The Commission acknowledged the Clackamas County Comprehensive Plan and land use regulations as complying with the

Statewide Planning Goals on February 9, 1983 (Acknowledgment Order 83-ACK-014). Since the Commission had not acknowledged Clackamas County's comprehensive plan and land use regulations, including the RA-1 zone, when the claimants acquired the property on August 7, 1975 and the property meets the definition of "agricultural land" in the goal, Goal 3 applied directly to property on the date of acquisition.⁶

In 1975, the state standards for a land division involving property where the local zoning was not acknowledged were that the resulting parcels must be of a size that are "appropriate for the continuation of the existing commercial agricultural enterprise in the area" (Statewide Planning Goal 3). Further, ORS 215.263 (1973 edition) required that all divisions of land subject to the provisions for EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). In 1975, ORS 215.263 did not provide for the creation of a small parcel for a non-farm dwelling separate from these provisions.⁷

Thus, the opportunity to divide the property when the claimants acquired it in 1975, was limited to land divisions consistent with Goal 3 that required the resulting farm or non-farm parcels to 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 215.243.

As for dwellings allowed in an EFU zone, in 1975, ORS 215 and EFU zoning required by Goal 3 allowed farm dwellings if determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Before a farm dwelling could be established on agricultural land, the farm use to which the dwelling relates must "be existing."⁸ Further, approval of a farm dwelling required that the dwelling be situated on a parcel wholly devoted to farm use and if on an existing parcel, the dwelling had to be on a parcel appropriate for the continuation of the existing commercial agricultural enterprise within the area. ORS 215.213(3) (1973 edition) authorized a non-farm dwelling only where the dwelling was compatible with farm uses, consistent with the intent of ORS 215.243, did not interfere seriously with accepted farming practices on adjacent lands, did not materially alter the stability of the land use pattern

⁶ Statewide Planning Goal 3 was applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of the county's Goal 3 program on February 9, 1983. *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); *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by Commission, the statewide planning goals and implementing rules no longer directly applied to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same in substance, the applicable rules must be interpreted and applied by the county in making its decision. *Forster v. Polk County*, 115 Or App 475 (1992); *Kenagy v. Benton County*, 115 Or App 131 (1992).

⁷ Compare ORS 215.263 (1973 edition) with the current version of ORS 215.263.

⁸ *Newcomer v. Clackamas County*, 92 Or App 174, modified 94 Or App 33 (1988); *Matteo v. Polk County*, 11 Or LUBA 259, 263 (1984), affirmed without opinion 70 Or App 179 (1984).

for the area, and was situated on land generally unsuitable for production of farm crops and livestock.⁹

No information has been provided showing that the claimants' request to divide and develop the property for residential use complies with either of the applicable partition or dwelling standards under Statewide Planning Goal 3, ORS 215.213 (1973 edition) in effect at the time the claimants acquired the property in 1975.

Conclusion

Based on the record, the department 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 the claimants' division and residential development of the subject property: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660 division 33. These laws will not apply to Wallace and Marcelline Thompson's use of tax lot 600 only to the extent necessary to allow them a use of the property permitted at the time they acquired it in 1966 and to Wallace and Marcelline Thompson's use of tax lot 700 only to the extent necessary to allow them a use of the property permitted at the time they acquired it in 1952. These laws will not apply to Steve and Tonya Thompson's division and development of tax lots 600 and 700, and Duane and Connie Meyer's division and development of tax lot 700 only to the extent necessary to allow them a use permitted at the time they acquired an interest in those tax lots on August 7, 1975.
2. The action by the State of Oregon provides the state's authorization to Wallace and Marcelline Thompson to use tax lot 600, subject to the standards in effect on July 1, 1966; and to Steve and Tonya Thompson to use tax lots 600 and 700 and to Duane and Connie Meyer to use tax lot 700, subject to the standards in effect on August 7, 1975. On August 7, 1975, the property was subject to compliance with the statewide planning goals, as discussed above.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 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 ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.
4. Any use of the property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in Conditions 1 through 3 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).

⁹ When determining whether land is "generally unsuitable for the production of farm crops and livestock" under ORS 215.213(3), the entire parcel or tract must be evaluated rather than a portion thereof. *Smith v. Clackamas County*, 313 Or 519 (1992).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the property, it may be necessary for them to obtain a decision under ORS 197.352, from a 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 October 12, 2005. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's 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. Comments received have been taken into account by the department in the issuance of this final report.