

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. M118439 |
| (BALLOT MEASURE 37) OF         | ) |                   |
| Reed Gould, CLAIMANT           | ) |                   |

Claimants: Reed Gould (the Claimant)

Property: Tax lots 403 and 404, Township 7S, Range 5W, Section 21, Polk 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 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 Reed Gould's division and development of the 41.99-acre property: applicable provisions of Statewide Planning Goal 4, ORS 215, and OAR 660 division 6 enacted after June 26, 1987. These land use regulations will not apply to Mr. Gould's use of his property only to the extent necessary to allow him to use the property for the use described in this report, and only to the extent that the use was permitted when he acquired the majority of the property on June 26, 1987.
2. The action by the State of Oregon provides the state's authorization to Reed Gould to use his property subject to the standards in effect on June 26, 1987. On that date, the property was subject to applicable provisions of Goals 3 and 4 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 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

claimant first obtains 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 claimant 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 claimant to use the property it may be necessary for him 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 claimant 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 claimant.

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



George Naughton, Deputy Director  
DLCD

Dated this 24<sup>th</sup> day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:



Dugan Petty, Deputy Administrator  
DAS, State Services Division

Dated this 24<sup>th</sup> 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 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<sup>1</sup>, 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.”

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<sup>1</sup> By order of the Marion County Circuit Court, “all time lines under Measure 37 [were] suspended indefinitely” on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

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

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

March 24, 2006

**STATE CLAIM NUMBER:** M118439

**NAME OF CLAIMANT:** Reed Gould

**MAILING ADDRESS:** 13805 Orchard Knob Road  
Dallas, Oregon 97338

**PROPERTY IDENTIFICATION:** Township 7S, Range 5W, Section 21  
Tax lots 403 and 404  
Polk County

**DATE RECEIVED BY DAS:** May 16, 2005

**180-DAY DEADLINE:** March 31, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

The claimant, Reed Gould, seeks compensation in the amount of \$1,000,000 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 property. The claimant desires compensation or the right to divide the subject 41.99-acre property into seven five-acre parcels and to develop a dwelling on each parcel.<sup>2</sup> The property is located at 13805 Orchard Knob Road, off of Perrydale Road, north of the City of Dallas, in Polk 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 Reed Gould's division of the property for residential development: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and OAR 660, division 6,

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<sup>1</sup> 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).

<sup>2</sup> The department understands that the claimant desires to create seven, five-acre parcels, and that the remaining area of less than seven acres on which the existing dwelling is located, would be retained.

enacted after June 26, 1987. These laws will not apply to Mr. Gould only to the extent necessary to allow him to use the property for the use described in the report, and only to the extent that the use was permitted at the time he acquired the majority of the property on June 26, 1987. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On June 20, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. In response to the 10-day notice,<sup>3</sup> DAS received six comment letters.

Two of the comment letters do not address whether the claim meets the criteria for relief (compensation or waiver) under ORS 197.352. Comments concerning the effects a use of the property may have on surrounding areas generally are 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 waiving a state law.

One of the comment letters is relevant to when the claimant became the present owner of the property. Three of the comment letters are relevant to whether a state law restricts the claimant's use of the property. Three of the comment letters are relevant to whether the restriction of the claimant's use of the property reduces the fair market value of the property. One of the comment letters is also relevant whether the laws that are the basis for the claim are exempt under ORS 197.352(3). The comments have been considered by the department in preparing this report. (See the comment letters in the department's claim file.)

### **IV. TIMELINESS OF CLAIM**

#### **Requirement**

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

1. For claims arising from land use regulations enacted prior to the effective date of the Measure (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 the Measure (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.

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<sup>3</sup> 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.

## **Findings of Fact**

This claim was submitted to DAS on May 16, 2005 for processing under OAR 125, division 145. The claim identifies Polk County's Farm-Forest (FF) zoning and HB 3661 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**

The claimant, Reed Gould, and his wife Kathleen Ann Gould, acquired 41.15 acres of the subject 41.99-acre property on June 26, 1987, as evidenced by a Notice of Contract for Sale of Real Property included with the claim. The claimant and Kathleen Gould acquired .28 acre of the subject property on May 4, 1993, and the remaining .56 acre of the subject property on February 13, 1996 (Polk County Deed Records Book 267, Page 1690 and Book 318, Page 784).<sup>4</sup> The claim includes a letter from a title company indicating that the claimant and his wife bought the property in June 1987, and have held continuous ownership since that time. Information provided by Polk County indicates that the claimant, Reed Gould, and Kathleen Ann Gould, are the current owners of the subject property.<sup>5</sup>

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<sup>4</sup> Copies of the 1993 and 1996, deeds were not included in the claim. Information on these acquisitions of .28 acre in 1993 and .56 acre in 1996 was obtained from Polk County's Final Decision on Measure 37 Claim, Board Order No. 05-59/Gould. For purposes of analyzing this Measure 37 claim, the acquisition date for the subject property is June 26, 1987, when all but .84 acre (97.9%) of the subject 41.99-acre property was acquired by the claimant and his wife.

<sup>5</sup> The claim does not identify Kathleen Ann Gould as a claimant. Although Ms. Gould has an interest in the property, based on the record, she is not a claimant for purposes of this Measure 37 claim.

## **Conclusions**

The claimant, Reed Gould, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C) ORS 197.352. The claimant, along with his wife Kathleen Gould, acquired the majority of the subject property on June 26, 1987.

## **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 Farm-Forest Zone and HB 3661 "Prohibits Building & Division." Additional information submitted by the claimant states "My property . . . was zoned AR-5 when purchased by me on July 1, 1987. House Bill 3661 subsequently changed it to FF in 1988. This zoning change resulted in a significant economic loss to me."

The claimant's property is zoned Polk County's Farm-Forest (FF) zone, which is a mixed agricultural and forestland zone adopted to comply with Statewide Goal 4 (Forest Lands) and the implementing provisions of OAR 660-006-0050 (effective February 5, 1990,) and subsequently amended on March 1, 1994, to comply with the provisions of HB 3661 (Chapter 792, Or Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Statewide Goals 3 and 4 are allowed except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993. Information was not provided in the claim regarding the predominant use of the property on January 1, 1993. Depending on the predominant use on January 1, 1993, the property is subject to either the requirements for dwellings applicable under exclusive farm use zoning required by Statewide Goal 3 and OAR 660 division 33 or forest zone provisions required by Statewide Goal 4 and OAR 660, division 6. This includes the dwelling standards asserted by the claimant as restricting the use of the property. However, no analysis of whether the subject property can be approved for a dwelling under the applicable farm or forest provisions has been provided.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones, which implement the 80-acre minimum lot size specified in ORS 215.780. Under OAR 660-006-055, the claimant's property cannot be divided into parcels smaller than 80 acres as may have been possible under the County zone applied to the majority of the subject property in 1987. However, no analysis of whether the subject property can be divided for non-farm dwellings under ORS 215.263(4)(b) has been provided.

Polk County's Farm-Forest (FF) zone was not acknowledged until April 22, 1988. Until the Commission acknowledged the County's land use regulations, the use of the subject property was subject to both the County's ordinances and the applicable statewide planning goals.<sup>6</sup>

Statewide Planning Goals 3 and 4 became applicable to the claimant's use of the property on January 25, 1975, and applied to legislative land use decisions and some quasi-judicial land use decisions, on a site-specific basis before the Commission acknowledged local plans.<sup>7</sup> Goal 3, as adopted in 1975, required that agricultural lands be "preserved and zoned for EFU pursuant to ORS 215." Goal 4, as adopted in 1975, required that forest lands be designated for forest uses. Regardless of whether the subject property would have been subject to either Goal 3 or Goal 4 when acquired, it would have been subject to either EFU zoning pursuant to ORS 215 or forest zoning adequate to retain forest lands for forest uses.

If subject to Goal 3, the state standards for a division of land without acknowledgment of the local zoning required that the created lots or parcels be of a size "appropriate for the continuation of the existing commercial agricultural enterprise in the area" (see Statewide Planning Goal 3). Further, ORS 215.263 (1985 edition) required that all land divisions subject to EFU zoning comply with the legislative intent in ORS 215.243 (Agricultural Land Use Policy). Thus, the opportunity to divide the subject property when acquired by the claimant in June 1987, was limited by Goal 3 to new lots or parcels that were: (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area, and (2) shown to be consistent with the ORS 215.243 legislative intent.

At the time of claimant's acquisition in June 1987, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1985 edition),<sup>8</sup> and non-farm dwellings were subject to ORS 215.213(3) (1985 edition).<sup>9</sup> Other uses were authorized and governed by the applicable provisions under Goal 3 and ORS 215.213.

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<sup>6</sup> On February 17, 1988, Polk County revised its comprehensive plan and Farm Forest Zone to comply with the Commission's 1986 continuance order (County Ordinances 87-26 and 87-27). On February 17, 1988, the Commission acknowledged Polk County's revised comprehensive plan and FF zone as complying with the Statewide Planning Goals (Commission Order 88-ACK-347, order signed April 22, 1988).

<sup>7</sup> See *Sunnyside Neighborhood Association v. Clackamas County*, 280 Or 569 (1977); *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978); *Jurgenson v. Union County*, 42 Or App 505 (1979); *Alexanderson v. Polk County*, 289 Or 427, rev den 290 or 137 (1980); and *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985). After the Commission acknowledged the County's plan and land use regulations, the statewide planning goals and implementing rules no longer directly applied to local land use decisions (see *Byrd v. Stringer*, 295 Or 311 (1983)). However, insofar as state and local provisions are materially the same in substance, the applicable statutes and rules must be interpreted and applied by the county in making its decision (*Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992)). In addition, state statutes continue to apply to the use of property in the County directly, even after acknowledgment.

<sup>8</sup> Under ORS 215.213, a farm dwelling may be established on agricultural land only if the farm use to which the dwelling relates exists (*Matteo v. Polk County*, 11 Or LUBA 259, 263 (1984), affirmed without opinion 70 Or App 179 (1984), and *Newcomer v. Clackamas County*, 92 Or App 174, modified 94 Or App 33 (1988)). Guidance on the application of the statutory standards for farm and non-farm dwellings in EFU zones can be found in Commission rules (OAR 660 division 5 adopted July 21, 1982, amended June 7, 1986 and repealed August 7, 1993).

If subject to Goal 4, the state standards required local land use regulations to “conserve forestlands for forest uses.” Specifically, Goal 4 only allowed land divisions that would protect commercial forestlands for commercial forest uses. Dwellings in forest zones can only be allowed if found to be “necessary and accessory” to one of the enumerated forest uses as defined in Goal 4.<sup>10</sup>

The opportunity to divide the property and to place residential dwellings on the property when the claimant acquired the majority of the property 1987, was limited to land divisions that were consistent with Goal 3 or Goal 4.

No information has been provided showing that the property division or placement of dwellings desired by the claimant complies with the minimum lot size standard for new parcels or standards for dwellings under either Goals 3 or 4 in effect at the time the claimant acquired his interest in the majority of the property on June 26, 1987.

### Conclusions

The current provisions applicable to lands zoned Farm-Forest (FF) under OAR 660-006-0050 and 0055 relating to land divisions and dwelling standards adopted since the claimant acquired the majority of the property in 1987, restrict the use of the property relative to uses allowed when the claimant acquired it in 1987. In 1987, the property was subject to the requirements of Polk County’s Farm-Forest Zone, Goals 3 and 4, and ORS 215 then in effect.

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 claimant has identified. There may be other laws that currently apply to the claimant’s use of the property, and that may continue to apply to the claimant’s 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

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<sup>9</sup> 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).

<sup>10</sup> Goal 4 prohibited uses that were not enumerated by Goal 4 as permissible uses for forest lands as well as those that were not necessary and accessory to an enumerated forest use, *Lamb v. Lane County*, 7 Or LUBA 137 (1983). Dwellings in forestlands were required to be “necessary and accessory” to show that such dwellings comply with the Goal 4 requirement that local land use regulations must “conserve forest lands for forest uses (*1000 Friends v. LCDC/Curry County*, 301 Or 447 (1986)). A dwelling that may “enhance” forest uses is not “necessary and accessory” to a forest use to the extent required by Goal 4 (*1000 Friends of Oregon v. LCDC/Lane County*, (1988)).

For guidance, the Goal 4 provisions were interpreted under OAR 660 division 6 effective September 1, 1982, and in *Lamb v. Lane County*, 7 Or LUBA 137 (1983), *1000 Friends v. LCDC/Curry County*, 301 Or 447 (1986), and *1000 Friends of Oregon v. LCDC/Lane County*, (1988). Another indication of the appropriate standards that applied to the property on June 26, 1987, are the land division and dwelling standards in Polk County’s Farm Forest Zone (County Ordinances 87-26 and 87-27) acknowledged by the Land Conservation and Development Commission on February 17, 1988.

proposal for that use. When the claimant seeks 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 \$1,000,000 as the reduction in the property's fair market value due to current restriction imposed on the claimant after he and his wife acquired the majority of the subject property. This amount is based on a comparison of real estate sales of five-acre parcels, at \$150,000 per five-acre parcel.

No other information was provided in the claim to document the reduction in the property's fair market value.

#### **Conclusions**

As explained in Section V.(1) of this report, the current owner is Reed Gould, who acquired the majority of the property on June 26, 1987. Under ORS 197.352, Mr. Gould is due compensation for land use regulations that restrict the use of the subject property 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 claimant acquired the property restrict division and development of the subject property. The claimant estimates the reduction in value due to the restrictions to be \$1,000,000.

Without an appraisal or other documentation it is not possible to substantiate the specific dollar amount the claimant demands 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 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 and local land use regulations that restrict the use of the property relative to what would have been allowed in 1987, when the majority of the subject property was acquired by the claimant and his wife. The state provisions that are implemented through the County Farm-Forest zone include Statewide Planning Goal 3 (Agricultural Lands), Goal 4 (Forest Lands) and applicable provisions of ORS 215 and OAR 660 division 6. These laws are

not exempt under ORS 197.352(3)(E) to the extent they were enacted or adopted after the claimant acquired the property on June 26, 1987. Provisions of Goals 3 and 4 and ORS 215 adopted or enacted before June 26, 1987, are exempt under ORS 197.352(3)(E).

According to Polk County, the subject property includes land within the flood plain area. ORS 197.352(3)(B) and (C) exempt regulations enacted to protect public health and safety and regulations required by federal law, respectively. To the extent that the flood plain designation constitute regulations to protect public health and safety, or are required under the provisions of federal laws, those regulations are exempt under ORS 197.352(3)(B) and (C) and will continue to apply to the claimant's use of the subject 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 mixed farm-forest land apply to the claimant's use of the property. These laws are not exempt under ORS 197.352(3)(E) to the extent they were enacted or adopted after the claimant acquired the property in 1987. Provisions of Goals 3 and 4 and ORS 215 in effect when the claimant acquired the property in 1987, are exempt under ORS 197.352(3)(E) and will continue to apply to the property. In addition, regulations limiting development in the designated flood hazard area may be exempt under ORS 197.352(3)(B) and (C).

There may be other laws that continue to apply to the claimant's 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 claimant seeks 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 uses that the claimant has 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 claimant should be aware that the less information he has provided to the department in his claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to his 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 set forth in this report, laws enforced by the Commission or the department restrict the claimant's ability to create the desired seven five-acre parcels, or develop those parcels for residential use. The claim asserts that the laws enforced by the Commission or department reduce the fair market value of the subject property by \$1,000,000. However, because the claim does not provide an appraisal or other specific documentation for how the specified restrictions reduce the fair market value of the property, a specific amount of compensation cannot be determined. 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 Reed Gould to use the subject property for a use permitted at the time he acquired the majority of the property on June 26, 1987.

### **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 Reed Gould's division and development of the 41.99-acre property: applicable provisions of Statewide Planning Goal 4, ORS 215, and OAR 660 division 6 enacted after June 26, 1987. These land use regulations will not apply to Mr. Gould's use of his property only to the extent necessary to allow him to use the property for the use described in this report, and only to the extent that the use was permitted when he acquired the majority of the property on June 26, 1987.
2. The action by the State of Oregon provides the state's authorization to Reed Gould to use his property subject to the standards in effect on June 26, 1987. On that date, the property was subject to applicable provisions of Goals 3 and 4 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 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 claimant first obtains 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 claimant 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 claimant to use the property it may be necessary for him 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 claimant 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 claimant.

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

The department issued its draft staff report on this claim on October 21, 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.