

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. M121808  
(BALLOT MEASURE 37) OF )  
Myrna Crone, CLAIMANT )

Claimant: Myrna Crone (the Claimant)

Property: Township 3S, Range 2E, Section 16B, Tax lots 2511 and 2512,  
Clackamas 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 Myrna Crone's division of tax lots 2511 and 2512 into parcels or to her development of a dwelling on each parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after February 1, 1993. These land use regulations will not apply to the claimant only to the extent necessary to allow her to use tax lots 2511 and 2512 for the use described in this report, and only to the extent that use was permitted when she acquired them on February 1, 1993.
2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lots 2511 and 2512 for the use described in this report, subject to the standards in effect on February 1, 1993. On that date, the tax lots were subject to compliance with Clackamas County's acknowledged GT district, and the applicable provisions of Goal 4 and OAR 660, division 6, then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lots 2511 and 2512 may not be used without a permit,

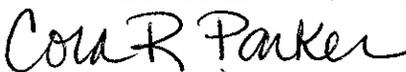
license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 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 tax lots 2511 and 2512 by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in Condition 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).

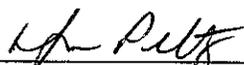
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use tax lots 2511 and 2512, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable 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 tax lots by the claimant.

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:

  
Deputy Director for  
Lane Shetterly, Director  
DLCD  
Dated this 21<sup>st</sup> day of June, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:

  
Dugan Petty, Deputy Administrator  
DAS, State Services Division  
Dated this 21<sup>st</sup> day of June, 2006.

## 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<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.

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. M 121808
(BALLOT MEASURE 37) OF	)	
Myrna Crone, CLAIMANT	)	

Claimant: Myrna Crone (the Claimant)

Property: Township 3S, Range 2E, Section 16B, Tax Lots 2516, 2591 and 2596,  
Clackamas County (the property)

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

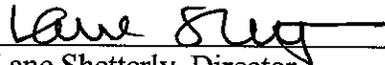
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, 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

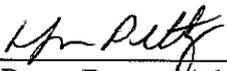
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 Deputy 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 21<sup>st</sup> day of June, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
\_\_\_\_\_  
Dugan Petty, Deputy Administrator  
DAS, State Services Division  
Dated this 21<sup>st</sup> day of June, 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)

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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.

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**  
**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**  
**Final Staff Report and Recommendation**

June 21, 2006

**STATE CLAIM NUMBER:** M121808

**NAME OF CLAIMANT:** Myrna Crone

**MAILING ADDRESS:** 20263 South Molalla Avenue  
Oregon City, Oregon 97045

**PROPERTY IDENTIFICATION:** Township 3S, Range 2E, Section 16B  
Tax lots 2511, 2512, 2516, 2591 and 2596  
Clackamas County

**OTHER CONTACT INFORMATION:** Jason Crone  
21339 South Beaver creek Road  
Oregon City, Oregon 97045

**DATE RECEIVED BY DAS:** August 10, 2005

**180-DAY DEADLINE:** June 25, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

The claimant, Myrna Crone, seeks compensation in the amount of \$375,000 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 claimant desires compensation or the right to divide the 20-acre subject property (consisting of the five tax lots listed above) into parcels and to develop a dwelling on each parcel. The subject property is located at near S. Molalla Avenue, near Oregon City, 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 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 Myrna Crone's division of tax lots 2511 and 2512 into parcels and to her

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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 that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6, enacted or adopted after February 1, 1993. These laws will not apply to the claimant only to the extent necessary to allow her to use these tax lots for the use described in this report, and only to the extent that use was permitted when she acquired them in 1993.

The department has further determined that this claim is not valid as to tax lots 2516, 2591 and 2596 because the claimant has not established her ownership of these tax lots. (See the complete recommendation in Section VI of this report.)

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

#### **Comments Received**

On October 3, 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.

The comment does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letter in the department's claim file.)

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

#### **Requirement**

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

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

#### **Findings of Fact**

This claim was submitted to DAS on August 10, 2005, for processing under OAR 125, division 145. The claim identifies OAR 660-006-0026(1)(A) and 660-006-0027(1) and

ORS 215.705 and 215.780(1)(c) as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

**Conclusions**

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

**V. ANALYSIS OF CLAIM**

**1. Ownership**

ORS 197.352 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

**Findings of Fact**

The claim includes five tax lots. The claimant, Myrna Crone, asserts an ownership date of April 4, 1975, for all five tax lots, based on an earnest money agreement (included in the claim) through which her husband, Donn Crone, agreed to acquire the subject property. The claim does not include the contract that establishes the date Donn Crone<sup>2</sup> acquired the subject property, but does include a title insurance policy for that acquisition, dated May 7, 1975. A partial fulfillment deed included with the claim, dated February 1, 1993, transfers the property to Donn and Myrna Crone and specifically indicates that the purpose of the transfer is “to add Myrna D. Crone to title of subject property.” The claimant has provided no documentation to establish that she acquired an ownership interest in any of the subject tax lots before February 1, 1993.

However, based on Clackamas County tax assessment records, it appears that the claimant conveyed her interest in some of the tax lots since she acquired the subject property in 1993. Clackamas County records indicate that the current ownership of the five subject tax lots is as follows:

<b>Tax Lot</b>	<b>Acres</b>	<b>Current Owner</b>
2511	11.69	Myrna Crone
2512	3.62	Myrna Crone
2516	0.28	Donn Crone
2591	4.95	Sophie Popp
2596	0.12	Donn Crone

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<sup>2</sup> The claimant submitted a “Certificate of Death” for Donn Crone on June 8, 2006. Donn Crone died July 10, 2004. Without additional information, the department cannot determine how, or if, Donn Crone’s death affects this claim.

Without additional documentation from the claimant to establish her current ownership of tax lots 2516, 2591 and 2596, the evidence in the record for this claim indicates that the claimant is not a present owner of these tax lots.

### **Conclusions**

The claimant, Myrna Crone, is an “owner” of the tax lots 2511 and 2512 as that term is defined by ORS 197.352(11)(C), as of February 1, 1993. The claimant’s husband, Donn Crone, is a “family member” as that term is defined by ORS 197.352(11)(A) with regard to tax lots 2511 and 2512 as of May 7, 1975.

The claimant, Myrna Crone, has not established that she is an “owner” of tax lots 2516, 2591, and 2596 as that term is defined in ORS 197.352(11)(C).

### **2. The Laws That are the Basis for This Claim**

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the 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 indicates that the claimant desires to divide the subject property into parcels and to develop a dwelling on each parcel. It indicates that ORS 215.705 and 215.780(1)(c) and OAR 660-006-0026(1)(A) and 660-006-0027(1) prevent the desired use.

The claim is based generally on Clackamas County’s current Timber (TBR) zone and the applicable provisions of state law that require such zoning. The subject property is zoned TBR as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the property is “forest land” under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

The claimant’s family acquired tax lots 2511 and 2512 after the adoption of the statewide planning goals but before the Commission acknowledged Clackamas County’s land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged the county’s plan and land use regulations when the claimant’s family acquired the tax lots on May 7, 1975, the statewide

planning goals, and Goal 4 in particular, applied directly to the tax lots when her family acquired them.<sup>3</sup>

Goal 4 went into effect on January 25, 1975, “to conserve forest lands for forest uses” and required, “Lands suitable for forest uses shall be inventoried and designated as forest lands. Existing forest land uses shall be protected unless proposed changes are in conformance with the comprehensive plan.” Those forest uses were defined as follows: “(1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock.”

No information has been presented in the claim to establish that the claimant’s desired division and development of tax lots 2511 and 2512 comply with the Goal 4 standards in effect when the claimant’s family acquired them in 1975.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4, ORS 215.705 to 215.755 and 215.780 and OAR 660-006-0026 and 660-006-0027 were all enacted or adopted after the claimant’s family acquired tax lots 2511 and 2512 in 1975 and do not allow the claimant’s desired division or development. However, the claim does not establish whether or to what extent the claimant’s desired use of tax lots 2511 and 2512 complies with the standards for land divisions and development under Goal 4, in effect when the claimant’s family acquired the tax lots on May 7, 1975.

### **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (described in Section V.2 of this report) must have “the effect of reducing the fair market value of the property, or any interest therein.”

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<sup>3</sup> 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 land use 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 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, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Foster v. Polk County*, 115 Or App 475 (1992); *Kenagy v. Benton County*, 115 Or App 131 (1992).

### **Findings of Fact**

The claim includes an estimate of \$375,000 as the reduction in the subject property's fair market value due to the regulation(s). This amount is based on the claimant's assessment of the subject property's fair market value.

### **Conclusions**

As explained in Section V.1 of this report, the claimant is Myrna Crone whose family acquired tax lots 2511 and 2512 on May 7, 1975. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the tax lots and have the effect of reducing their fair market value. Based on the findings and conclusions in Section V.2 of this report, laws enacted or adopted since the claimant's family acquired the tax lots restrict the desired use. The claimant estimates the effect of the regulation(s) on the fair market value of the subject property is a reduction of \$375,000.

Without an appraisal or other relevant evidence and without verification of whether or the extent to which the claimant's desired use of tax lots 2511 and 2512 was allowed under the standards in effect when her family acquired them, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of tax lots 2511 and 2512 has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

### **4. Exemptions Under ORS 197.532(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 4, ORS 215 and OAR 660, division 6, which Clackamas County has implemented through its current TBR zone. With the exception of provisions of Goal 4 in effect on May 7, 1975, these land use regulations were enacted or adopted after the claimant's family acquired tax lots 2511 and 2512.

### **Conclusions**

It appears that the general statutory, goal and rule restrictions on residential division and development of tax lots 2511 and 2512 are not exempt under ORS 197.352(3)(E) to the extent they were enacted or adopted after the claimant's family acquired them on May 7, 1975. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimant's family acquired the tax lots 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.

## VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

### **Findings of Fact**

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimant's desired use of tax lots 2511 and 2512. 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 \$375,000. 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 tax lots, 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 the claimant's desired use of tax lots 2511 and 2512 was allowed under the laws in effect when she acquired them. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the tax lots 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 Myrna Crone to use tax lots 2511 and 2512 for a use permitted at the time she acquired these tax lots on February 1, 1993.

When the claimant acquired tax lots 2511 and 2512 on February 1, 1993, they were subject to Clackamas County's acknowledged General Timber (GT) district. Accordingly, when the claimant acquired those tax lots, her desired division and development would have been subject to compliance with the requirements of the county's GT district and the applicable provisions of Goal 4 and OAR 660, division 6, then in effect. The claim does not establish whether or to what extent the claimant's desired use complies with those requirements.

In addition to the applicable provisions of Goal 4 and OAR 660, division 6, in effect on February 1, 1993, there may be other laws that apply to the claimant's use of tax lots 2511 and 2512 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 tax lots 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 depending on when they were enacted

or adopted, may continue to apply to the tax lots. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D) and will continue to apply to the tax lots on that basis.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to tax lots 2511 and 2512 based on the uses 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 she has provided to the department in her claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to her use of the tax lots.

### **Conclusions**

Based on the record before the department, the claimant, Myra Crone, has not established that she is entitled to relief under ORS 297.352(1) with regard to tax lots 2516, 2591 and 2596 as a result of land use regulations enforced by the Commission or the department because she has not established that she is a present owner of these tax lots. Therefore, the department recommends that the claim as to those tax lots be denied.

The department further recommends that the claim be approved as to tax lots 2511 and 2512, 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 Myrna Crone's division of tax lots 2511 and 2512 into parcels or to her development of a dwelling on each parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after February 1, 1993. These land use regulations will not apply to the claimant only to the extent necessary to allow her to use tax lots 2511 and 2512 for the use described in this report, and only to the extent that use was permitted when she acquired them on February 1, 1993.
2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lots 2511 and 2512 for the use described in this report, subject to the standards in effect on February 1, 1993. On that date, the tax lots were subject to compliance with Clackamas County's acknowledged GT district, and the applicable provisions of Goal 4 and OAR 660, division 6, then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lots 2511 and 2512 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 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 tax lots 2511 and 2512 by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in Condition 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 tax lots 2511 and 2512, it may be necessary for her 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 tax lots by the claimant.

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

The department issued its draft staff report on this claim on June 2, 2006. 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.