



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office Fax: (503) 378-5518

Third Floor/Measure 37 Fax: (503) 378-5318

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

October 19, 2007

To: Claimant and Interested Persons

From: Cora R. Parker, Acting Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M131078

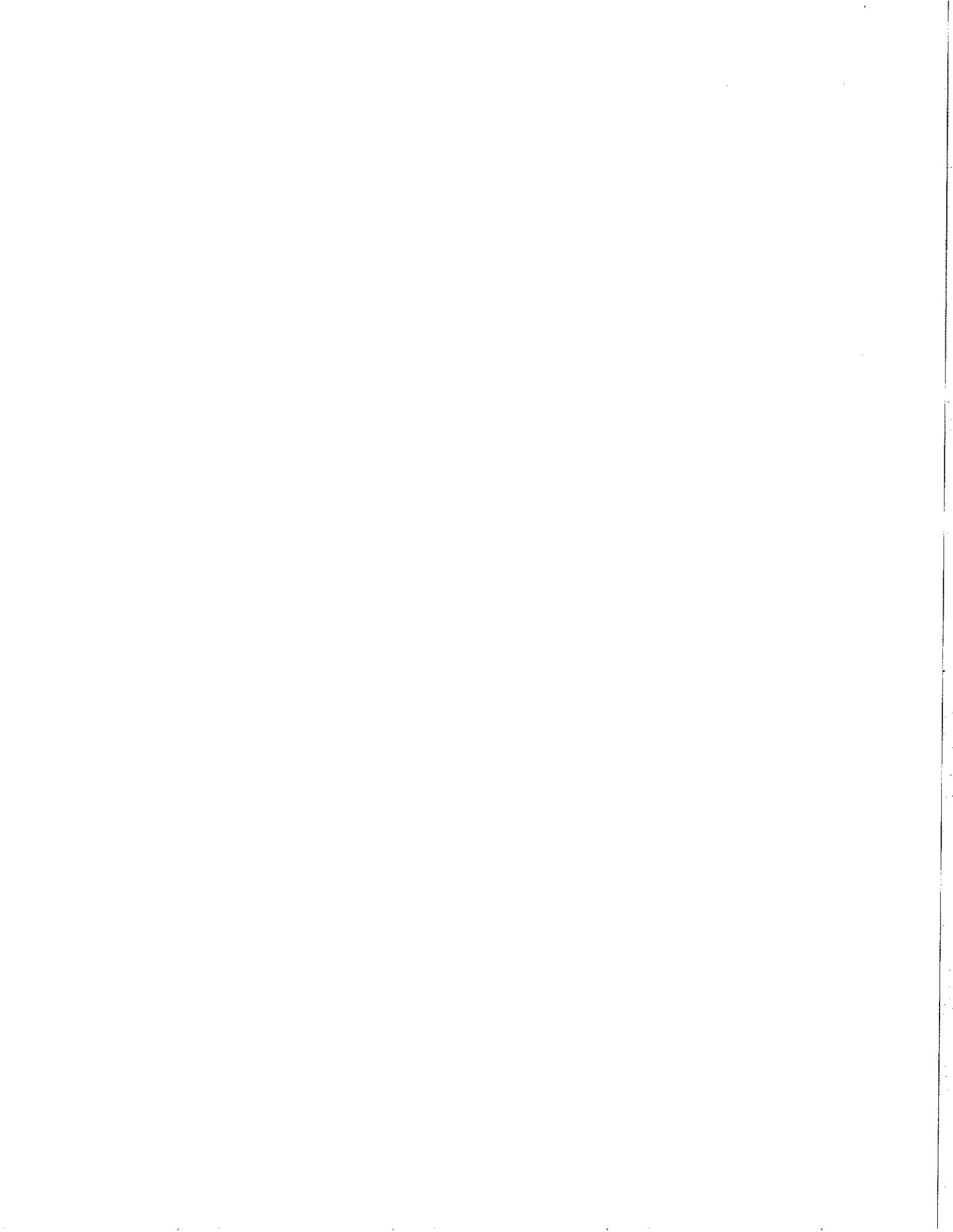
Claimants: Thomas and Mary Whittaker; Fred and Marian Rauch

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Department of Land Conservation and Development's Draft Staff Report and Recommendation.

This Draft Staff Report and Recommendation sets forth the department's evaluation of and recommendation on the claim. Oregon Administrative Rule 125-145-0100(3) provides that the claimant (or the claimant's agent) and any third parties who submitted comments on the claim may submit written comments, evidence, and information in response to any third-party comments contained in the report, and to the staff report and recommendation itself. Such response must be filed no more than 15 calendar days after the date of mailing of this report. Any response from you must be delivered to the Oregon Department of Administrative Services (DAS), 1225 Ferry Street SE, U160, Salem, Oregon 97301, and will be deemed timely filed if either postmarked on the 15th day or actually delivered to DAS by the close of business on the 15th day.

This department will review any responses submitted, and a Final Order on the claim will be issued after such review.





ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

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

October 19, 2007

STATE CLAIM NUMBER: M131078

NAMES OF CLAIMANTS: Thomas L. and Mary E. Whittaker
Fred D. and Marian D. Rauch

MAILING ADDRESS: Thomas and Mary Whittaker
73765 Neer City Road
Rainier, Oregon 97048

Fred and Marian Rauch
20301 NE 194th Avenue
Battle Ground, Washington 98604

PROPERTY IDENTIFICATION: Township 7N, Range 2W, Section 27
Tax lots 203 and 205
Columbia County

DATE RECEIVED BY DAS: November 22, 2006

DEADLINE FOR FINAL ACTION:¹ May 15, 2008

I. SUMMARY OF CLAIM

The claimants, Thomas Whittaker, Mary Whittaker, Fred Rauch and Marian Rauch, seek compensation in the amount of \$360,000 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 claimants desire compensation or the right to divide the 32.53-acre subject property into one 1.5-acre parcel and six approximately 5-acre parcels and to develop a dwelling on each of the six approximately 5-acre parcels.² The subject property is located at 73765 Neer City Road, south of Rainier, in Columbia County. (See claim.)

¹ ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

² The claimants desire to divide the portion of the property lying east of Neer City Road into six, approximately 5-acre parcels, and to develop a dwelling on each parcel. The seventh parcel would include a 1.5-acre portion of the property located west of the road, on which an existing dwelling is located,

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary 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 Thomas and Mary Whittaker's or to Fred and Marian Rauch's division of the 32.53-acre subject property into one 1.5-acre parcel and six approximately 5-acre parcels and to their development of a dwelling on each of the six 5-acre parcels: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6, enacted or adopted after Thomas and Mary Whittaker acquired tax lot 205 and after Fred and Marian Rauch acquired tax lot 203. These laws will not apply to Thomas and Mary Whittaker only to the extent necessary to allow them to use tax lot 205 for the use described in this report, and only to the extent that use was permitted when they acquired the portion of tax lot 205 located on the west side of Neer City Road (the western portion of tax lot 205) on May 27, 1967, and only to the extent the use was permitted when they acquired the portion of tax lot 205 located on the east side of Neer City Road (the eastern portion of tax lot 205) on January 6, 1978. These laws will not apply to Fred and Marian Rauch only to the extent necessary to allow them to use tax lot 203 for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 203 on January 6, 1978.

The department further finds that the claim is not valid as to Thomas and Mary Whittaker for tax lot 203 because they are not owners of tax lot 203; and is not valid as to Fred and Marian Rauch for tax lot 205 because they are not owners of tax lot 205. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On July 10, 2007, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, no written comments were received in response to the 15-day notice.

IV. TIMELINESS OF CLAIM

Requirement

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

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
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 November 22, 2006, for processing under OAR 125, division 145. The claim identifies ORS 215.700 through 215.755 and OAR 660, division 6, as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

Claimants Thomas and Mary Whittaker acquired the western portion of tax lot 205 on May 27, 1967, as reflected by a warranty deed included with the claim.

The claimants, Thomas and Mary Whittaker and Fred and Marian Rauch, acquired tax lot 203 and the eastern portion of tax lot 205 on January 6, 1978, as reflected by a warranty deed included with the claim.

On June 23, 1978, Fred and Marian Rauch transferred their ownership interest in the eastern portion of tax lot 205 to Thomas and Mary Whittaker, as reflected by a warranty deed included with the claim. Thomas and Mary Whittaker then transferred their ownership interest in tax lot 203 to Fred and Marian Rauch on September 1, 1978, as reflected by a warranty deed included with the claim.

Thomas and Mary Whittaker transferred tax lot 205 to the Whittaker Living Trust, with themselves as trustees, on June 15, 1990, as reflected by a warranty deed included with the claim. Fred and Marian Rauch transferred tax lot 203 to the Rauch Family Living Trust, with themselves as trustees, on May 24, 1996, as reflected by a quitclaim deed included with the claim.³

³ Transfer of property to a revocable trust does not result in a change of ownerships for purpose of ORS 197.352.

The Columbia County Assessor's Office confirms Thomas and Mary Whittaker's current ownership of tax lot 205, and Fred and Marian Rauch's current ownership of tax lot 203.

Conclusions

Claimants Thomas and Mary Whittaker are "owners" of tax lot 205 as that term is defined by ORS 197.352(11)(C), as of May 27, 1967, for the western portion of tax lot 205, and as of January 6, 1978, for the eastern portion of tax lot 205. Claimants Fred and Marian Rauch are "owners" of tax lot 203 as that term is defined by ORS 197.352(11)(C), as of January 6, 1978. Thomas and Mary Whittaker are not owners of tax lot 203, and Fred and Marian Rauch are not owners of tax lot 205.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants' use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the 32.53-acre subject property into one 1.5-acre parcel and six approximately 5-acre parcels and to develop a dwelling on each of the approximately 5-acre parcels, and that current land use regulations prevent the desired use.

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimants' property is zoned Primary Forest-76 (PF-76) by Columbia County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimants' 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.

Current land use regulations, including ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, generally prohibit the division of forest-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 generally establishes an 80-acre minimum size for the creation of new lots or parcels on forest-zoned land and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.705 to 215.755 establish standards for the creation of new parcels and dwellings allowed in forest zones.

OAR 660, division 6, became effective on September 1, 1982, to implement Goal 4 and establish standards for divisions and development of land zoned for forest use, and was amended on March 1, 1994, to implement ORS 215.705 to 215.755 and 215.780. OAR 660-006-0025 interprets the goal and statutory standard for uses allowed in forest zones. OAR 660-006-0026 interprets land division requirements in forest zones, and 660-006-0027 and 660-006-0029 interpret the standards for dwellings in forest zones.

Thomas and Mary Whittaker, acquired the western portion of tax lot 205 on May 27, 1967, prior to the adoption of the statewide planning goals and their implementing rules and statutes.

Thomas and Mary Whittaker, acquired the eastern portion of tax lot 205, and Fred and Marian Rauch acquired tax lot 203 on January 6, 1978, after the adoption of the statewide planning goals, but before the Commission acknowledged Columbia County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.⁴ Because the Commission had not acknowledged the county's plan and land use regulations when Fred and Marian Rauch acquired tax lot 203 and when Thomas and Mary Whittaker acquired the eastern portion of tax lot 205 on January 6, 1978, the applicable statewide planning goals, and Goal 4 in particular, would have applied directly to any development application for tax lot 203 or the eastern portion of tax lot 205.⁵

As adopted in 1975, Goal 4 was intended to "conserve forest lands for forest uses" and required that lands suitable for forest uses "be inventoried and designated as forest lands" and that existing forest land uses "be protected unless proposed changes are in conformance with the comprehensive plan." Those forest uses were defined as: "(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." Specifically, Goal 4 only allowed land divisions that would protect commercial forest lands for commercial forest uses. Dwellings in forest zones could only be allowed if found to be "necessary and accessory" to one of the enumerated forest uses listed in Goal 4.⁶ OAR 660, division 6, effective on September 1, 1982, interpreted and implemented the Goal 4 standards for identifying and inventorying lands suitable for forest uses.

The claim does not establish whether or to what extent the claimants' desired division and development of the subject property were allowed under the standards in effect when Fred and

⁴ Columbia County's comprehensive plan was acknowledged for compliance with Goal 4 on August 9, 1985.

⁵ 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 569 (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. *Forster v. Polk County*, 115 Or App 475 (1992); *Kenagy v. Benton County*, 115 Or App 131 (1992).

⁶ 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 forest lands were required to be "necessary and accessory" to show that such dwellings complied with the Goal 4 requirement that local land use regulations must "conserve forest lands for forest uses." *1000 Friends v. LCDL (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. LCDL (Lane County)*, 305 Or 384 (1988). For additional guidance, the Goal 4 provisions were interpreted under OAR 660, division 6, effective on September 1, 1982, in *1000 Friends of Oregon v. LCDL (Lane County)* and in *1000 Friends v. LCDL (Curry County)*.

Marian Rauch acquired tax lot 203 and when Thomas and Mary Whittaker acquired the eastern portion of tax lot 205 on January 6, 1978.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 ORS 215 and OAR 660, division 6, for forest-zoned land were all enacted or adopted after Thomas and Mary Whittaker acquired the western portion of tax lot 205 in 1967 and the eastern portion of tax lot 205 in 1978, and after Fred and Marian Rauch acquired tax lot 203 in 1978, and do not allow the claimants' desired division or development of the property. However, the claim does not establish whether or to what extent the claimants' desired use of tax lot 203 and the eastern portion of tax lot 205 complies with the standards for land divisions and development under Goal 4 in effect when Fred and Marian Rauch acquired tax lot 203 and when Thomas and Mary Whittaker acquired the eastern portion of tax lot 205 on January 6, 1978.

As explained in Section V.(1), Thomas and Mary Whittaker are not "owners" of tax lot 203, and Fred and Marian Rauch are not "owners" of tax lot 205, as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict Thomas and Mary Whittaker's use of tax lot 203 or Fred and Marian Rauch's use of tax lot 205 with the effect of reducing the fair market value of the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property, based on the uses that the claimants have identified. There may be other laws that currently apply to the claimants' use of the subject property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

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

Findings of Fact

The claim includes an estimate of \$360,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on a market analysis included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are Thomas and Mary Whittaker who acquired the western portion of tax lot 205 on May 27, 1967, and the eastern portion of tax lot 205 on January 6, 1978, and Fred and Marian Rauch who acquired tax lot 203 on January 6, 1978. Thomas and Mary Whittaker are not owners of tax lot 203 and Fred and Marian Rauch are

not owners of tax lot 205. Therefore, no laws restrict Thomas and Mary Whittaker's use of tax lot 203 or Fred and Marian Rauch's use of tax lot 205 with the effect of reducing the fair market value of the property.

Under ORS 197.352, Thomas and Mary Whittaker are due compensation for land use regulations that restrict their use of tax lot 205 and have the effect of reducing its fair market value, and Fred and Marian Rauch are due compensation for land use regulations that restrict their use of tax lot 203 and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since Thomas and Mary Whittaker acquired tax lot 205 and since Fred and Marian Rauch acquired tax lot 203 restrict the claimants' desired use of the property. The claimants estimate that the effect of the land use regulations on the fair market value of the subject property is a reduction of \$360,000.

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

4. Exemptions Under ORS 197.352(3)

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

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, which Columbia County has implemented through its current PF -76 zone. All of these land use regulations were enacted or adopted after Thomas and Mary Whittaker acquired the western portion of tax lot 205. With the exception of provisions of Goal 4 adopted before Thomas and Mary Whittaker acquired the eastern portion of tax lot 205 and Fred and Marian Rauch acquired tax lot 203 on January 6, 1978, these state land use regulations were not in effect when the claimants acquired the property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that the general statutory, goal and rule restrictions on residential division and development of the subject property are not exempt under ORS 197.352(3)(E) to the extent they were enacted or adopted after the claimants acquired the property. Provisions of Goal 4 in effect when Thomas and Mary Whittaker acquired tax lot 205 in 1967 and 1978, and when Fred and Marian Rauch acquired tax lot 203 in 1978, are exempt under ORS 197.352(3)(E) and will continue to apply to the subject property.

Other laws in effect when the claimants acquired the subject property are exempt under ORS 197.352(3)(E) and will also continue to apply to the claimants' use of the property. In addition, the department notes that ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-0027, -0029 and -0035, include fire protection standards for dwellings and structures in forest zones. ORS 197.352 (3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . ." Accordingly, the siting standards for dwellings and structures in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

As explained in Section V.(1) of this report, Thomas and Mary Whittaker are not "owners" of tax lot 203, and Fred and Marian Rauch are not owners of tax lot 205, as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to Thomas and Mary Whittaker for tax lot 203 and to Fred and Marian Rauch for tax lot 205.

There may be other laws that continue to apply to the claimants' use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws currently apply to that use and may continue to apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject properties.

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 do not restrict Thomas and Mary Whittaker's desired use of tax lot 203 and Fred and Marian Rauch's desired use of tax lot 205 because Thomas and Mary Whittaker are not owners of tax lot 203 and Fred and Marian Rauch are not owners of tax lot 205. Laws enforced by the Commission or the department do restrict Thomas and Mary Whittaker's desired use of

tax lot 205 and Fred and Marian Rauch's desired use of tax lot 203. 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 \$360,000. 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 subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the property was allowed under the standards in effect when Thomas and Mary Whittaker acquired tax lot 205 and when Fred and Marian Rauch acquired tax lot 203. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Thomas and Mary Whittaker to use tax lot 205 for a use permitted at the time they acquired the western portion of tax lot 205 on May 27, 1967, and the eastern portion of tax lot 205 on January 6, 1978, and to allow Fred and Marian Rauch to use tax lot 203 for a use permitted at the time they acquired tax lot 203 on January 6, 1978.

Conclusions

Based on the record, the department recommends that the claim be denied as to Thomas and Mary Whittaker for tax lot 203 because they are not owners of tax lot 203; and be denied as to Fred and Marian Rauch for tax lot 205 because they are not owners of tax lot 205.

The department otherwise recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Thomas and Mary Whittaker's or to Fred and Marian Rauch's division of the 32.53-acre subject property into one 1.5-acre parcel and six approximately 5-acre parcels or to their development of a dwelling on each approximately 5-acre parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after Thomas and Mary Whittaker acquired tax lot 205 and after Fred and Marian Rauch acquired tax lot 203. These land use regulations will not apply to the claimants only to the extent necessary to allow Thomas and Mary Whittaker to use tax lot 205 for the use described in this report, and only to the extent that use was permitted when they acquired the western portion of tax lot 205 on May 27, 1967, and only to the extent the use was permitted when they acquired the eastern portion of tax lot 205 on January 6, 1978; and to allow Fred and Marian Rauch to use tax lot 203 for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 203 on January 6, 1978.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect when Thomas and Mary Whittaker acquired the western portion of tax lot 205 on May 27, 1967, and when Thomas and Mary Whittaker acquired the eastern portion of tax lot 205 and Fred and

Marian Rauch acquired tax lot 203 on January 6, 1978. On January 6, 1978, the property was subject to compliance with the provisions of Goal 4 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.
4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.
6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

VII. NOTICE OF OPPORTUNITY TO COMMENT

This staff report is not a final decision by the department and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Such response must be filed no more than 15 calendar days after the date this report is mailed to the claimants and any third parties. Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses must be delivered to the Oregon Department of Administrative Services (DAS), Measure 37 Unit, Risk Management-State Services Division, 1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 and will be deemed timely filed if either postmarked on the 15th day, or actually delivered to DAS by the close of business on the 15th day. Note: Please reference the claim number and claimants names, and clearly mark your comments as "Draft Staff Report comments." Comments must be submitted in writing only. Those comments submitted electronically or by facsimile will not be accepted.