

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. M125095
(BALLOT MEASURE 37) OF	)	
Geraldine Ottosen and Rebecca Lindahl	)	
CLAIMANTS	)	

Claimants: Geraldine Ottosen and Rebecca Lindahl (the Claimants)

Property: Township 15S, Range 5W, Section 32, Tax lots 900 and 1000, Lane County  
(the Property)

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

Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Geraldine Ottosen and Rebecca Lindahl's division of the 39.57-acre subject property into three parcels or to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired each of the subject tax lots. These land use regulations will not apply to the claimants only to the extent necessary to allow the claimants to use the subject property for the use described in this report, and only to the extent that use was permitted when Geraldine Ottosen acquired tax lot 900 on July 23, 1956, and both claimants tax lot 1000 on January 15, 1976, and only to the extent that use was permitted when Rebecca Lindahl acquired tax lot 900 on March 24, 1988.
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 Geraldine Ottosen acquired tax lot 900 on July 23, 1956, and tax lot 1000 on January 15, 1976, and when Rebecca Lindahl acquired tax lot 1000 on January 15, 1976, and tax lot 900 on March 24, 1988. On January 15, 1976, tax lot 1000 was subject to the applicable provisions of Goal 3

and ORS 215. On March 24, 1988, tax lot 900 was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Lane County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

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.

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 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



Cora R. Parker, Deputy Director  
DLCD

Dated this 16<sup>th</sup> day of October, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator  
DAS, State Services Division

Dated this 16<sup>th</sup> day of October, 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, 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."

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

October 16, 2006

**STATE CLAIM NUMBER:** M125095

**NAMES OF CLAIMANTS:** Geraldine Ottosen  
Rebecca Lindahl

**MAILING ADDRESS:** Geraldine Ottosen  
320 Timothy Street  
Junction City, Oregon 97448

Rebecca Lindahl  
26295 High Pass Road  
Junction City, Oregon 97448

**PROPERTY IDENTIFICATION:** Township 15S, Range 5W, Section 32  
Tax lots 900 and 1000  
Lane County

**OTHER CONTACT INFORMATION:** Norman Waterbury  
28788 Gimpl Hill Road  
Eugene, Oregon 97402

**OTHER INTEREST IN PROPERTY:** Zoe Callahan (lessee)

**DATE RECEIVED BY DAS:** April 25, 2006

**180-DAY DEADLINE:** October 22, 2006

**I. SUMMARY OF CLAIM**

The claimants, Geraldine Ottosen and Rebecca Lindahl, seek compensation in the amount of \$190,000 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 39.57-acre subject property into three parcels and to develop a dwelling on each resulting undeveloped parcel. The subject property is located at 26295 High Pass Road, near Junction City, in Lane 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 Geraldine Ottosen and Rebecca Lindahl's division of the 39.57-acre subject property into three parcels and to their development of a dwelling on each resulting undeveloped parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after each claimant acquired each of the subject tax lots. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Geraldine Ottosen acquired tax lot 900 in 1956 and both claimants acquired tax lot 1000 in 1976, and only to the extent that use was permitted when Rebecca Lindahl acquired tax lot 900 in 1988. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On July 25, 2006, 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.

### **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 April 25, 2006, for processing under OAR 125, division 145. The claim identifies provisions of ORS 175.250, 197.175 and 215 and several Lane County ordinances 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**

Geraldine Ottosen acquired tax lot 900 on July 23, 1956, as reflected by a warranty deed included with the claim. Geraldine Ottosen and her daughter, claimant Rebecca Lindahl, acquired tax lot 1000 on January 15, 1976, as reflected by a warranty deed included with the claim. Rebecca Lindahl acquired an interest in tax lot 900 from Geraldine Ottosen on March 24, 1988, as reflected by a warranty deed included with the claim. The Lane County Assessor’s Office confirms the claimants’ current ownership of the subject property.

## **Conclusions**

The claimants, Geraldine Ottosen and Rebecca Lindahl, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). Geraldine Ottosen has been an owner of tax lot 900 since July 23, 1956, and tax lot 1000 since January 15, 1976. Rebecca Lindahl has been an owner of tax lot 1000 since January 15, 1976, and tax lot 900 since March 24, 1988. Geraldine Ottosen is a “family member” of Rebecca Lindahl as to tax lot 900, as that term is defined by ORS 197.352(11)(A).

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

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the 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 39.57-acre subject property into three parcels and to develop a dwelling on each resulting undeveloped parcel. It indicates that the use is not allowed under current land use regulations.<sup>1</sup>

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<sup>1</sup> In addition to applicable provisions of ORS 215, the claimants cited ORS 197.175 and “175.250” as applicable to this claim. ORS 197.175 addresses city and county planning responsibilities. The claimants have not established how that statute applies to and restricts their desired use of their property with the effect of reducing the property’s

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimants' property is zoned EFU-40 by Lane County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.<sup>2</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.213, 215.263 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the division of EFU-zoned land in marginal lands counties into parcels less than 80 acres and establish standards for the development of dwellings on existing or any proposed parcel on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). Under ORS 215.780(2)(a), a county may adopt a lower minimum lot or parcel size, subject to acknowledgement by the Commission. The Commission has acknowledged Lane County's EFU-40 zone, which requires a minimum lot or parcel size of 40 acres. ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone in a marginal lands county under ORS 215.213. OAR 660-033-0130(4)(e) (applicable to non-farm dwellings in marginal lands counties) became effective on August 7, 1993. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which became effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Geraldine Ottosen acquired tax lot 900 in 1956, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1956.

The claimants acquired tax lot 1000 after the adoption of the statewide planning goals, but before the Commission acknowledged Lane 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 claimants acquired tax lot 1000 on January 15, 1976, the statewide planning goals, and Goal 3 in particular, applied directly to tax lot 1000 when they acquired it.<sup>3</sup>

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fair market value. That statute is not addressed further in this report. The Oregon Revised Statutes do not include a chapter 175.

<sup>2</sup> The claimants' property is "agricultural land" because it contains National Resources Conservation Service Class I-IV soils.

<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 comprehensive plan and implementing regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev. den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the claimants' opportunity to divide tax lot 1000 when they acquired it in 1976 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.

Under the Goal 3 standards in effect on January 15, 1976, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition).

No information has been presented in the claim to establish that the claimants' desired division of the subject property into three parcels complies with the "commercial" standard for farm parcels under Goal 3 or the standards for non-farm parcels under ORS 215.263 (1973 edition), nor is there any information to establish that the claimants' desired development of three dwellings on the subject property satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1973 edition).

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were enacted or adopted after Geraldine Ottosen acquired tax lot 900 and after the claimants acquired tax lot 1000. These laws restrict the use of the subject property relative to the uses allowed when the claimants acquired it. However, the claim does not establish whether or the extent to which the claimants' desired use of tax lot 1000 complies with the standards for land divisions and development under the requirements of Goal 3 and ORS 215 in effect when the claimants acquired tax lot 1000 on January 15, 1976.

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

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Commission, the statewide planning goals and implementing rules no longer applied directly to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

development 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 \$190,000 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 an appraisal included with the claim.

#### **Conclusions**

As explained in Section V.(1) of this report, the claimants are Geraldine Ottosen who acquired tax lot 900 in 1956 and her daughter Rebecca Lindahl. The claimants acquired tax lot 1000 in 1976. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the property 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 Geraldine Ottosen acquired tax lot 900 and the claimants acquired tax lot 1000 restrict the claimants’ desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$190,000.

Without additional evidence establishing that the laws identified in Section V.(2) of this report have reduced the property’s fair market value, 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 the claimants 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 subject 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 relative to the uses permitted when Geraldine Ottosen acquired tax lot 900 and both claimants acquired tax lot 1000, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Lane County has implemented through its current EFU-40 zone. With the exception of Goal 3 and ORS 215 in effect when the claimants acquired tax lot 1000, these land

use regulations were enacted or adopted after Geraldine Ottosen acquired tax lot 900 and after the claimants acquired tax lot 1000.

### **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 with the exception of Goal 3 and ORS 215 in effect in 1976, the general statutory, goal and rule restrictions on division and development of the claimants' property were in effect when Geraldine Ottosen acquired tax lot 900 in 1956 and when both claimants acquired tax lot 1000 in 1976. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when Geraldine Ottosen acquired tax lot 900 and when the claimants acquired tax lot 1000 are exempt and would 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 claimants' desired use of the subject property. 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 \$190,000. However, without additional 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 subject property was allowed under the standards in effect when Geraldine Ottosen acquired tax lots 900 and when the claimants acquired tax lot 1000. 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 Geraldine Ottosen to use the subject property for a use permitted at the time she acquired tax lot 900 on July 23, 1956, and tax lot 1000 on January

15, 1976, and to allow Rebecca Lindahl to use the property for a use permitted at the time she acquired tax lot 1000 on January 15, 1976, and tax lot 900 on March 24, 1988.

At the time the Rebecca Lindahl acquired an interest in tax lot 900 in 1988, it was subject to Lane County's acknowledged EFU zone.<sup>4</sup> When Rebecca Lindahl acquired tax lot 900, her desired use of the property would have been governed by the county's acknowledged EFU zone and the applicable provisions of ORS 215 then in effect.<sup>5</sup> In 1988, ORS 215.263 (1987 edition) required that divisions of land in EFU zones be "appropriate for the continuation of the existing commercial agricultural enterprise within the area" or not smaller than the minimum size in the county's acknowledged plan. ORS 215.283(1)(f) (1987 edition) generally allowed farm dwellings "customarily provided in conjunction with farm use." Non-farm dwellings were allowed under ORS 215.283(3) if they were determined to be compatible with farm use, not interfere seriously with accepted farm practices, not materially alter the stability of the land use pattern in the area and be situated on generally unsuitable land for the production of farm crops and livestock.

In addition to the applicable provisions of Goal 3 and ORS 215 in effect on January 15, 1976, and also OAR 660, division 5, in effect when Rebecca Lindahl acquired tax lot 900 on March 24, 1988, and other laws in effect when the claimants acquired the subject property, there may be other laws that 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, and depending on when they were enacted or adopted, may continue to apply to the claimants' property. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D) and will continue to apply to the subject property on that basis.

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

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<sup>4</sup> Lane County's EFU zone was acknowledged by the Commission for compliance with Goal 3 on October 31, 1984.

<sup>5</sup> After the county's comprehensive plan and land use regulations were acknowledged by the Commission as complying with the statewide planning goals, the goals and implementing rules no longer applied directly to individual local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

## Conclusions

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 Geraldine Ottosen and Rebecca Lindahl's division of the 39.57-acre subject property into three parcels or to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired each of the subject tax lots. These land use regulations will not apply to the claimants only to the extent necessary to allow the claimants to use the subject property for the use described in this report, and only to the extent that use was permitted when Geraldine Ottosen acquired tax lot 900 on July 23, 1956, and both claimants tax lot 1000 on January 15, 1976, and only to the extent that use was permitted when Rebecca Lindahl acquired tax lot 900 on March 24, 1988.
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 Geraldine Ottosen acquired tax lot 900 on July 23, 1956, and tax lot 1000 on January 15, 1976, and when Rebecca Lindahl acquired tax lot 1000 on January 15, 1976, and tax lot 900 on March 24, 1988. On January 15, 1976, tax lot 1000 was subject to the applicable provisions of Goal 3 and ORS 215. On March 24, 1988, tax lot 900 was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Lane County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.
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.

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

The department issued its draft staff report on this claim on September 29, 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.