

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 A
COMPENSATION UNDER ORS 197.352	)	CLAIM NO. M129559
(BALLOT MEASURE 37) OF	)	
Edward Seagraves, CLAIMANT	)	

Claimant: Edward Seagraves (the Claimant)

Property: Township 2S, Range 3E, Section 28: tax lots 1100, 1101, 1102 and 1200

Township 2S, Range 3E, Section 29: tax lots 100, 101 and 102

Township 2S, Range 3E, Section 32: tax lot 500

Township 2S, Range 3E, Section 33: tax lot 900

Township 2S, Range 3E, Section 34: tax lots 900, 902 and 903

Township 3S, Range 3E, Section 4: tax lots 300 and 301

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 Edward Seagraves' division of tax lots 100, 101, 102, 300, 301, 500, 900 (Section 33), 900 (Section 34), 902, 903, 1100, 1101, 1102 and 1200 into quarter-acre parcels

and to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after he acquired each tax lot, as follows:

Tax Lot:	Acquisition Date:
1100	March 10, 1964
300	April 27, 1966
900 (Section 34)	June 30, 1966
500	July 17, 1973
101 and 102	June 4, 1974
900 (Section 33) and 1200	February 3, 1976
100, 301, 902, 903, 1101 and 1102	January 3, 1989

These laws will not apply to Edward Seagraves only to the extent necessary to allow him to use the property for the use described in this report, and only to the extent that use was permitted when he acquired each tax lot. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use tax lots 100, 301, 902, 903, 1101 and 1102 in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lots 100, 101, 102, 300, 301, 500, 900 (Section 33), 900 (Section 34), 902, 903, 1100, 1101, 1102 and 1200 for the use described in this report, subject to the standards in effect when the claimant acquired each tax lot as described above. On June 4, 1974, tax lots 101 and 102 were subject to the applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition). On February 3, 1976, tax lots 900 (Section 33) and 1200 were subject to applicable provisions of Goal 3 and ORS 215 then in effect. On January 3, 1989, tax lots 100, 301, 902, 903 1101 and 1102 were subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Clackamas 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 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 subject property imposed by private parties.

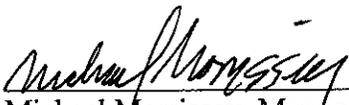
4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for him to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the

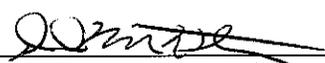
necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.

This Order is entered by the Manager for the Measure 37 Services Division 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

  
Michael Morrissey, Manager  
DLCD, Measure 37 Services Division  
Dated this 14<sup>th</sup> day of December, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 14<sup>th</sup> day of December, 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**

December 14, 2006

**STATE CLAIM NUMBER:** M129559  
Report A<sup>1</sup>

**NAME OF CLAIMANT:** Edward Seagraves

**MAILING ADDRESS:** 16268 S Babler Road  
Oregon City, Oregon 97045

**PROPERTY IDENTIFICATION:** Township 2S, Range 3E  
Section 28: tax lots 1100, 1101, 1102 and  
1200  
Section 29: tax lots 100, 101 and 102  
Section 32: tax lot 500  
Section 33: tax lot 900  
Section 34: tax lots 900, 902 and 903

Township 3S, Range 3E  
Section 4: tax lots 300 and 301  
Clackamas County<sup>2</sup>

**OTHER CONTACT INFORMATION:** Donald B. Bowerman  
PO Box 100  
Oregon City, Oregon 97045

**DATE RECEIVED BY DAS:** June 22, 2006

**180-DAY DEADLINE:** December 19, 2006

**I. SUMMARY OF CLAIM**

The claimant, Edward Seagraves, seeks compensation in the amount of \$11,836,470 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use

---

<sup>1</sup> Three claimants were identified in claim M129559. This staff report only addresses the claim of claimant Edward Seagraves as identified above. The claim of the remaining claimants, Kathleen Seagraves Higdon and Sara Jane Pursley, are addressed in companion Report B.

<sup>2</sup> The subject property includes 14 tax lots. Tax lot 100 consists of 62.9 acres; tax lot 101 consists of 9.1 acres; tax lot 102 consists of 8 acres; tax lot 300 consists of 29.28 acres; tax lot 301 consists of 8.52 acres; tax lot 500 consists of 206.36 acres; tax lot 900 (Section 33) consists of 49.2 acres; tax lot 900 (Section 34) consists of 62.17 acres; tax lot 902 consists of 7.5 acres; tax lot 903 consists of 7.5 acres; tax lot 1100 consists of 42.11 acres; tax lot 1101 consists of 6.2 acres; tax lot 1102 consists of 7.36 acres; and tax lot 1200 consists of 18.83 acres.

of certain private real property. The claimant desires compensation or the right to divide the 525.03-acre subject property into quarter-acre parcels and to develop a dwelling on each parcel.<sup>3</sup> Tax lots 100, 101 and 102 are located at 16268 S Babler Road in the Carver-Logan area; tax lots 300 and 301 are located on the southeast corner of S Charriere Road and S Strowbridge Road in the Redland-Fischers Mill area; tax lot 500 is located on the west side of S Criswell Road in the Redland-Fischers Mill area; tax lots 900 (Section 34), 902 and 903 are located at 17800 S Springwater Road in the Redland-Fischers Mill area; tax lots 1100, 1101 and 1102 are located on the northeast corner of S Springwater Road and S Babler Road in the Carver-Logan area; and tax lots 900 (Section 33) and 1200 are located at 16923 S Springwater Road in the Carver-Logan area, all in Clackamas County. (See claim.)

## II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Edward Seagraves' division of tax lots 100, 101, 102, 300, 301, 500, 900 (Section 33), 900 (Section 34), 902, 903, 1100, 1101, 1102 and 1200 consisting of 525.03 acres into quarter-acre parcels and to his development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Land), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after he acquired each tax lot, as follows:

Tax Lot:	Acquisition Date:
1100	March 10, 1964
300	April 27, 1966
900 (Section 34)	June 30, 1966
500	July 17, 1973
101 and 102	June 4, 1974
900 (Section 33) and 1200	February 3, 1976
100, 301, 902, 903, 1101 and 1102	January 3, 1989

These laws will not apply to Edward Seagraves only to the extent necessary to allow him to use the property for the use described in this report, and only to the extent that use was permitted when he acquired each tax lot. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use tax lots 100, 301, 902, 903, 1101 and 1102 in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

---

<sup>3</sup> The claim also indicates that the claimant desires to sell or transfer the newly created parcels for development. In effect, the claimant requests that a decision of the department to "not apply" (waive) certain laws as set forth in this report be transferable with the property. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. A determination of transferability is beyond the scope of relief that the department may grant under ORS 197.352. The Oregon Department of Justice has advised the department that "[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost."

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

#### **Comments Received**

On October 27, 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, seven written comments were received in response to the 10-day notice.

The comments do 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 letters in the department's claim file.)

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

#### **Requirement**

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

1. For claims arising from land use regulations enacted prior to the effective date of 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 June 22, 2006, for processing under OAR 125, division 145. The claim identifies "all land use regulations that restrict development including but not limited to Senate Bill 100 (1973) and all regulatory enactments pursuant thereto and adopted thereafter including but not limited to" House Bill 3661, ORS 197 and 215 and provisions of OAR 660, divisions 6, and 33, 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

Claimant Edward Seagraves acquired the subject property on the following dates:

Date:	Party:	Document:	Tax Lots:
May 18, 1960	Edward Seagraves	Warranty Deed Book 571, page 490	100, 101 and 102
March 10, 1964	Edward Seagraves	Warranty Deed Book 636, page 741	1100, 1101 and 1102
April 27, 1966	Edward Seagraves and Merridy Seagraves	Warranty Deed Book 674, page 115	300 and 301
June 30, 1966	Edward Seagraves	Warranty Deed Book 676, page 239	900 (Section 34), 902 and 903
July 17, 1973	Edward Seagraves	Warranty Deed 73-25227	500
April 16, 1974	Merridy Seagraves conveys to Edward Seagraves	Warranty Deed 74-9665	300 and 301
April 16, 1974	Edward Seagraves conveys to Merridy Seagraves	Warranty Deed 74-9666	301
June 4, 1974	Edward Seagraves conveys to Merridy Seagraves	Warranty Deed 74-14919	100, 101, 102
		Warranty Deed 74-14917	902
		Warranty Deed 74-918	903
		Warranty Deed 74-14920	1101
		Warranty Deed 74-14921	1102
February 3, 1976	Edward Seagraves	Warranty Deed 76-4540	900 (Section 33) and 1200

Date:	Party:	Document:	Tax Lots:
January 3, 1989	Merridy Seagraves conveys to Edward Seagraves	Warranty Deed 89-02313	100
		Warranty Deed 89-02317	301
		Warranty Deed 89-02313	902
		Warranty Deed 89-02312	903
		Warranty Deed 89-02315	1101
		Warranty Deed 89-02316	1102

The Clackamas County Assessor's Office confirms Edward Seagraves' current ownership of each of the subject tax lots.

### **Conclusions**

Claimant Edward Seagraves is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of March 10, 1964, for tax lot 1100; April 27, 1966, for tax lot 300; June 30, 1966, for tax lot 900 (Section 34); July 17, 1973, for tax lot 500; June 4, 1974, for tax lots 101 and 102; February 3, 1976, for tax lots 900 (Section 33) and 1200; and January 3, 1989, for tax lots 100, 301, 902, 903, 1101 and 1102. Edward Seagraves is also a "family member" 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 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 525.03-acre subject property into quarter-acre parcels and to develop a dwelling on each parcel. It indicates that the use is not allowed under current land use regulations.<sup>4</sup>

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 claimant's property is zoned

<sup>4</sup> The claimant summarily cites numerous state land use laws as applicable to this claim, but does not establish how the laws either apply to the claimant's desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimant's property or do not restrict the use of the claimant's property in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimant's use of the subject property, based on the claimant's asserted desired use.

by Clackamas County as EFU as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant's property is "agricultural land" as defined by Goal 3.<sup>5</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-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 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). 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 under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

The claimant acquired tax lot 1100 in 1964, tax lots 300 and 900 (Section 34) in 1966, and tax lot 500 in 1973; and the claimant's family acquired tax lots 100, 101 and 102 in 1960, tax lots 1101 and 1102 in 1964, and tax lots 301, 902 and 903 in 1966, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to tax lots 100, 101, 102, 300, 301, 900 (Section 34), 902, 903, 1100, 1101 and 1102 in 1960, 1964 and 1966. In 1973, tax lot 500 was zoned by Clackamas County as RA-1, which allowed a one-acre minimum lot size for new lots or parcels.

The claimant acquired tax lots 900 (Section 33) and 1200 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. At that time, tax lots 900 (Section 33) and 1200 were zoned by Clackamas County as RA-1. Because the Commission had not acknowledged the county's plan and land use regulations when the claimant acquired tax lots 900 (Section 33) and 1200 on February 3, 1976, the statewide planning goals, and Goal 3 in particular, applied directly to those tax lots when he acquired them.<sup>6</sup>

---

<sup>5</sup> The claimant's property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

<sup>6</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 Commission, the statewide planning goals and implementing rules no longer applied directly to such local land use

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 claimant's opportunity to divide tax lots 900 (Section 33) and 1200 when he acquired them 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 February 3, 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 claimant's desired division of tax lots 900 (Section 33) and 1200 into quarter-acre 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 claimant's desired development of dwellings on tax lots 900 (Section 33) and 1200 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 all enacted or adopted after the claimant acquired tax lot 1100 in 1964, tax lots 300 and 900 (Section 34) in 1966, and tax lot 500 in 1973; and the claimant's family acquired tax lots 100, 101 and 102 in 1960, tax lots 1101 and 1102 in 1964, tax lots 300, 301, 902 and 903 in 1966, and do not allow the desired division or residential development of the property. The claim does not establish whether or the extent to which the claimant's desired use of tax lots 900 (Section 33) and 1200 complies with the standards for land divisions and development under the requirements of Goal 3 and ORS 215 in effect when the claimant acquired those tax lots on February 3, 1976. These laws restrict the use of the subject property relative to the uses allowed when the claimant and the claimant's family acquired 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 claimant has identified. There may be other laws that currently apply to the claimant's use of the subject property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property

---

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).

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.

### **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 \$11,836,470 as the reduction in the subject property’s fair market value due to the regulations that restrict the claimant’s desired use of the property. This amount is based on the claimant’s assessment of the subject property’s value.

#### **Conclusions**

As explained in Section V.(1) of this report, the claimant is Edward Seagraves who acquired tax lot 1100 in 1964, tax lots 300 and 900 (Section 34) in 1966, tax lot 500 in 1973, and tax lots 900 (Section 33) and 1200 in 1976; and whose family member acquired tax lots 100, 101 and 102 in 1960, tax lots 1101 and 1102 in 1964 and tax lots 301, 902 and 903 in 1966. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject 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 the claimant and the claimant’s family acquired the subject property restrict the claimant’s desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the property is a reduction of \$11,836,470.

Without an appraisal or other documentation, 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, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Clackamas County has implemented through its current EFU zone. With the exception of provisions of Goal 3 and ORS 215 in effect when the claimant acquired tax lots 900 (Section 33) and 1200 in 1976, all of these land use regulations were enacted or adopted after the claimant and the claimant’s family acquired the subject 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 none of the general statutory, goal and rule restrictions on division and development of the claimant's property were in effect when the claimant acquired tax lot 1100 in 1964, tax lots 300 and 900 (Section 34) in 1966, and tax lot 500 in 1973; and the claimant's family acquired tax lots tax lots 100, 101 and 102 in 1960, tax lots 1101 and 1102 in 1964 and tax lots 301, 902 and 903 in 1966.

With the exception of provisions of Goal 3 and ORS 215 in effect in 1976, the statutory, goal and rule restrictions on division and development of tax lots 900 (Section 33) and 1200 were not in effect when the claimant acquired those tax lots. As a result, these laws are not exempt under ORS 197.352(3)(E). Provisions of Goal 3 and ORS 215 in effect when the claimant acquired tax lots 900 (Section 33) and 1200 in 1976 are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. Other laws in effect when the claimant and the claimant's family acquired the subject property are also 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 laws that restrict the use of the subject 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 subject 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 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 \$11,836,470. 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 claimant's desired use of the subject property was allowed under the standards in effect when the claimant and the claimant's family acquired the property. 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 Edward Seagraves to use the property for a use permitted at the time he acquired tax lot 1100 on March 10, 1964; tax lot 300 on April 27, 1966; tax lot 900 (Section 34) on June 30, 1966; tax lot 500 on July 17, 1973; tax lots 101 and 102 on June 4, 1974; tax lots 900 (Section 33) and 1200 on February 3, 1976; and tax lots 100, 301, 902, 903, 1101 and 1102 on January 3, 1989.

Edward Seagraves acquired tax lots 101 and 102 on June 4, 1974, after the adoption of Senate Bill 100 (Chapter 80, Oregon Laws 1973) effective on October 5, 1973, but before the adoption of the statewide planning goals, effective on January 25, 1975. At that time, tax lots 101 and 102 were zoned by Clackamas County as RA-1.

During the period between October 5, 1973 and January 25, 1975, ORS 197.175(1) and 197.280 (1973 editions) required, in addition to any local plan or zoning provisions, that cities and counties exercise their planning responsibilities in accordance with the interim land use planning goals set forth in ORS 215.515 (1973 edition). *Petersen v. Klamath Falls*, 279 Or 249 (1977); see also, *Meeker v. Board of Comm'rs*, 287 Or 665 (1979) (review of a subdivision is an exercise of planning responsibilities requiring application of the goals); *State Housing Council v. Lake Oswego*, 48 Or App. 525 (1981) (noting that while "[l]and use planning responsibility is not defined in ORS ch 197, the Supreme Court has interpreted that term as including annexation approvals, *subdivision approvals* [emphasis added] and partition approvals") citing *Petersen*, *Meeker* and *Alexanderson v. Polk County*, 285 Or 427 (1980). Edward Seagraves' desired use includes subdivision of tax lots 101 and 102. If Edward Seagraves had sought to create that use in 1974, as a matter of law, the use would have been subject to the interim planning goals at ORS 215.515.<sup>7</sup>

The following interim goals are directly applicable to this claim: "To preserve the quality of the air, water and *land* [emphasis added] resources of the state"; "To conserve prime farm lands for the production of crops"; "To provide for the orderly and efficient transition from rural to urban land use"; "To protect life and property in areas subject to floods, landslides and other natural disasters"; "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation"; and "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." ORS 215.515 (1973 edition).

---

<sup>7</sup> The "interim" land use goals are set forth in ORS 215.515(1)(a) to (j) (1973 edition) as follows: (a) "To preserve the quality of the air, water and land resources of the state," (b) "To conserve open space and protect natural and scenic resources," (c) "To provide for the recreational needs of citizens of the state and visitors," (d) "To conserve prime farm lands for the production of crops," (e) "To provide for the orderly and efficient transition from rural to urban land use," (f) "To protect life and property in areas subject to floods, landslides and other natural disasters," (g) "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation," (h) "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development," (i) "To diversify and improve the economy of the state" and (j) "To ensure that the development of properties within the state is commensurate with the character and the physical limitations of the land." ORS 215.515 (1973 edition).

One of the interim goals was to “conserve prime farm lands for the production of crops.” Soil types are a determinant of prime farm land. Ten percent (approximately 2 acres) of the soils on the 17.10 acres of tax lots 101 and 102 are rated as “prime” by the Natural Resource Conservation Service (NRCS). According to the Oregon Department of Agriculture, Oregon has only a limited supply of soils rated “prime” (8.0 percent of all agricultural land), and a very limited supply of soils rated Class 1 (0.9 percent of all agricultural land).

No information has been provided establishing whether or to what extent the claimant’s desired division of tax lots 101 and 102 for residential development complies with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time the claimant acquired those tax lots on June 4, 1974.

At the time the claimant acquired tax lots 100, 301, 902, 903, 1101 and 1102, the property was subject to Clackamas County’s acknowledged EFU zone.<sup>8</sup> When the claimant acquired tax lots 100, 301, 902, 903, 1101 and 1102, the claimant’s desired use of those tax lots would have been governed by the county’s acknowledged EFU zone and the applicable provisions of ORS 215 then in effect.<sup>9</sup> In 1989, 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.

The claim does not establish whether or to what extent the claimant’s desired division and development of tax lots 100, 301, 902, 903, 1101 and 1102 was allowed under the standards in effect when he acquired those tax lots on January 3, 1989.

In addition to the laws in effect when Edward Seagraves acquired each of the subject tax lots, there may be other laws that continue to apply to the claimant’s 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 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. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

---

<sup>8</sup> When Clackamas County’s EFU zone was acknowledged by the Commission for compliance with Goal 3 on December 31, 1981, tax lots 100, 902, 903, 1101 and 1102 were zoned General Agriculture District (GAD), which allowed a 40-acre minimum lot size; tax lot 301 was zoned EFU-20, which allowed a 20-acre minimum lot size for new lots or parcels.

<sup>9</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).

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 claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimant should be aware that the less information he has provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to his use of the subject property.

**Conclusions**

Based on the record, the department recommends that the claim be approved, subject to the following terms:

In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Edward Seagraves' division of tax lots 100, 101, 102, 300, 301, 500, 900 (Section 33), 900 (Section 34), 902, 903, 1100, 1101, 1102 and 1200 into quarter-acre parcels and to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after he acquired each tax lot, as follows:

Tax Lot:	Acquisition Date:
1100	March 10, 1964
300	April 27, 1966
900 (Section 34)	June 30, 1966
500	July 17, 1973
101 and 102	June 4, 1974
900 (Section 33) and 1200	February 3, 1976
100, 301, 902, 903, 1101 and 1102	January 3, 1989

These laws will not apply to Edward Seagraves only to the extent necessary to allow him to use the property for the use described in this report, and only to the extent that use was permitted when he acquired each tax lot. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use tax lots 100, 301, 902, 903, 1101 and 1102 in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lots 100, 101, 102, 300, 301, 500, 900 (Section 33), 900 (Section 34), 902, 903, 1100, 1101, 1102 and 1200 for the use described in this report, subject to the standards in effect when the claimant acquired each tax lot as described above. On June 4, 1974, tax lots 101 and 102 were subject to the applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition). On February 3, 1976, tax lots 900 (Section 33) and 1200 were subject to applicable provisions of Goal 3 and ORS 215 then in effect. On January 3, 1989, tax lots 100, 301, 902, 903, 1101 and 1102 were subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Clackamas 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 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 subject property imposed by private parties.

4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for him to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.

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

The department issued its draft staff report on this claim on November 24 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.

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 B-2
COMPENSATION UNDER ORS 197.352	)	CLAIM NO. M129559
(BALLOT MEASURE 37) OF	)	
Sara Jane Pursley, CLAIMANT	)	

Claimant: Sara Jane Pursley (the Claimant)

Property: Township 2S, Range 3E, Section 28: tax lots 1100, 1101, 1102 and 1200  
Township 2S, Range 3E, Section 29: tax lots 100, 101 and 102  
Township 2S, Range 3E, Section 32: tax lot 500  
Township 2S, Range 3E, Section 33: tax lot 900  
Township 2S, Range 3E, Section 34: tax lots 900, 902 and 903  
Township 3S, Range 3E, Section 4: tax lots 300 and 301  
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 for tax lots 100, 101, 300, 500, 900 (Section 33), 900 (Section 34), 903, 1100, 1101 and 1200 as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

The Claim is approved for tax lots 102, 301, 902 and 1102 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 Kathleen Seagraves Higdon's division of tax lots 101, 301, 903 and 1101 into quarter-acre parcels and to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after she acquired each tax lot.

Tax Lot:	Acquisition Date:
301, 903 and 1101	January 3, 1989
101	May 7, 2001

These laws will not apply to Kathleen Seagraves Higdon only to the extent necessary to allow her to use tax lots 101, 301, 903 and 1101 for the use described in this report, and only to the extent that use was permitted when she acquired those tax lots. The department acknowledges that the relief to which Kathleen Seagraves Higdon is entitled under ORS 197.352 may not allow her to use tax lots 101, 301, 903 and 1101 in the manner set forth in the claim.

In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Sara Jane Pursley's division of tax lots 102, 301, 902 and 1102 into quarter-acre parcels and to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after she acquired each tax lot.

Tax Lot:	Acquisition Date:
301, 902 and 1102	January 3, 1989
102	May 7, 2001

These laws will not apply to Sara Jane Pursley only to the extent necessary to allow her to use tax lots 102, 301, 902 and 1102 for the use described in this report, and only to the extent that use was permitted when she acquired those tax lots. The department acknowledges that the relief to which Sara Jane Pursley is entitled under ORS 197.352 may not allow her to use tax lots 102, 301, 902 and 1102 in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lots 101, 102, 301, 902, 903, 1101 and 1102 for the use described in this report, subject to the standards in effect when Kathleen Seagraves Higdon acquired tax lots 301, 903 and 1101 on January 3, 1989, and tax lot 101 on May 7, 2001; and when Sara Jane Pursley acquired tax lots 301, 902 and 1102 on January 3, 1989, and tax lot 102 on May 7, 2001. On January 3, 1989, tax lots 301, 902, 903, 1101 and 1102 were subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Clackamas County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect. On May 7, 2001, tax lots 101 and 102 were subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, 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).

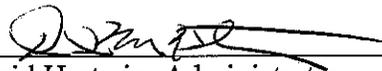
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable 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 Manager for the Measure 37 Services Division 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

  
Michael Morrissey, Manager  
DLCD, Measure 37 Services Division  
Dated this 14<sup>th</sup> day of December, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 14<sup>th</sup> day of December, 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.”

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 B-1
COMPENSATION UNDER ORS 197.352	)	CLAIM NO. M129559
(BALLOT MEASURE 37) OF	)	
Kathleen Seagraves Higdon, CLAIMANTS	)	

Claimants: Kathleen Seagraves Higdon (the Claimants)

Property: Township 2S, Range 3E, Section 28: tax lots 1100, 1101, 1102 and 1200  
Township 2S, Range 3E, Section 29: tax lots 100, 101 and 102  
Township 2S, Range 3E, Section 32: tax lot 500  
Township 2S, Range 3E, Section 33: tax lot 900  
Township 2S, Range 3E, Section 34: tax lots 900, 902 and 903  
Township 3S, Range 3E, Section 4: tax lots 300 and 301  
Clackamas County (the Property)

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

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

ORDER

The Claim is denied as to tax lots 100, 102, 300, 500, 900 (Section 33), 900 (Section 34), 902, 1100, 1102 and 1200 as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

The Claim is approved as to tax lots 101, 301, 903 and 1101 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 Kathleen Seagraves Higdon's division of tax lots 101, 301, 903 and 1101 into quarter-acre parcels and to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after she acquired each tax lot.

Tax Lot:	Acquisition Date:
301, 903 and 1101	January 3, 1989
101	May 7, 2001

These laws will not apply to Kathleen Seagraves Higdon only to the extent necessary to allow her to use tax lots 101, 301, 903 and 1101 for the use described in this report, and only to the extent that use was permitted when she acquired those tax lots. The department acknowledges that the relief to which Kathleen Seagraves Higdon is entitled under ORS 197.352 may not allow her to use tax lots 101, 301, 903 and 1101 in the manner set forth in the claim.

In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Sara Jane Pursley's division of tax lots 102, 301, 902 and 1102 into quarter-acre parcels and to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after she acquired each tax lot.

Tax Lot:	Acquisition Date:
301, 902 and 1102	January 3, 1989
102	May 7, 2001

These laws will not apply to Sara Jane Pursley only to the extent necessary to allow her to use tax lots 102, 301, 902 and 1102 for the use described in this report, and only to the extent that use was permitted when she acquired those tax lots. The department acknowledges that the relief to which Sara Jane Pursley is entitled under ORS 197.352 may not allow her to use tax lots 102, 301, 902 and 1102 in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lots 101, 102, 301, 902, 903, 1101 and 1102 for the use described in this report, subject to the standards in effect when Kathleen Seagraves Higdon acquired tax lots 301, 903 and 1101 on January 3, 1989, and tax lot 101 on May 7, 2001; and when Sara Jane Pursley acquired tax lots 301, 902 and 1102 on January 3, 1989, and tax lot 102 on May 7, 2001. On January 3, 1989, tax lots 301, 902, 903, 1101 and 1102 were subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Clackamas County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect. On May 7, 2001, tax lots 101 and 102 were subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, 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).

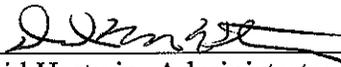
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable 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 Manager for the Measure 37 Services Division 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

  
Michael Morrissey, Manager  
DLCD, Measure 37 Services Division  
Dated this 14<sup>th</sup> day of December, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 14<sup>th</sup> day of December, 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**

December 14, 2006

**STATE CLAIM NUMBER:** M129559  
Report B<sup>1</sup>

**NAMES OF CLAIMANTS:** Kathleen Seagraves Higdon  
Sara Jane Pursley

**MAILING ADDRESS:** Kathleen Seagraves Higdon  
3610 NW Oleander Place  
Corvallis, Oregon 97330

Sara Jane Pursley  
PO Box 1297  
Castle Rock, Washington 98611

**PROPERTY IDENTIFICATION:** Township 2S, Range 3E  
Section 28: tax lots 1100, 1101, 1102 and  
1200  
Section 29: tax lots 100, 101 and 102  
Section 32: tax lot 500  
Section 33: tax lot 900  
Section 34: tax lots 900, 902 and 903

Township 3S, Range 3E  
Section 4: tax lots 300 and 301  
Clackamas County<sup>2</sup>

**OTHER CONTACT INFORMATION:** Donald B. Bowerman  
PO Box 100  
Oregon City, Oregon 97045

**DATE RECEIVED BY DAS:** June 22, 2006

**180-DAY DEADLINE:** December 19, 2006

---

<sup>1</sup> Three claimants were identified in claim M129559. This staff report only addresses the claims of claimants, Kathleen Seagraves Higdon and Sara Jane Pursley as identified above. The claim of the remaining claimant, Edward Seagraves, is addressed in companion Report A.

<sup>2</sup> The subject property includes 14 tax lots. Tax lot 100 consists of 62.9 acres; tax lot 101 consists of 9.1 acres; tax lot 102 consists of 8 acres; tax lot 300 consists of 29.28 acres; tax lot 301 consists of 8.52 acres; tax lot 500 consists of 206.36 acres; tax lot 900 (Section 33) consists of 49.2 acres; tax lot 900 (Section 34) consists of 62.17 acres; tax lot 902 consists of 7.5 acres; tax lot 903 consists of 7.5 acres; tax lot 1100 consists of 42.11 acres; tax lot 1101 consists of 6.2 acres; tax lot 1102 consists of 7.36 acres; and tax lot 1200 consists of 18.83 acres.

## I. SUMMARY OF CLAIM

The claimants, Kathleen Seagraves Higdon and Sara Jane Pursley, seek compensation in the amount of \$11,836,470 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 525.03-acre subject property into quarter-acre parcels and to develop a dwelling on each parcel.<sup>3</sup> Tax lots 100, 101 and 102 are located at 16268 S Babler Road in the Carver-Logan area; tax lots 300 and 301 are located on the southeast corner of S Charriere Road and S Strowbridge Road in the Redland-Fischers Mill area; tax lot 500 is located on the west side of S Criswell Road in the Redland-Fischers Mill area; tax lots 900 (Section 34), 902 and 903 are located at 17800 S Springwater Road in the Redland-Fischers Mill area; tax lots 1100, 1101 and 1102 are located on the northeast corner of S Springwater Road and S Babler Road in the Carver-Logan area; and tax lots 900 (Section 33) and 1200 are located at 16923 S Springwater Road in the Carver-Logan area, all 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 Commission or the department not apply to Kathleen Seagraves Higdon's division of tax lots 101, 301, 903 and 1101 into quarter-acre parcels and to her development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Land), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after she acquired each tax lot.

Tax Lot:	Acquisition Date:
301, 903 and 1101	January 3, 1989
101	May 7, 2001

These laws will not apply to Kathleen Seagraves Higdon only to the extent necessary to allow her to use tax lots 101, 301, 903 and 1101 for the use described in this report, and only to the extent that use was permitted when she acquired those tax lots. The department acknowledges that the relief to which Kathleen Seagraves Higdon is entitled under ORS 197.352 may not allow her to use tax lots 101, 301, 903 and 1101 in the manner set forth in the claim.

Department staff also recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Commission or the department not apply to Sara Jane Pursley's division of tax lots 102, 301, 902 and 1102 into quarter-acre parcels and to her

<sup>3</sup> The claim also indicates that the claimants desire to sell or transfer the newly created parcels for development. In effect, the claimants request that a decision of the department to "not apply" (waive) certain laws as set forth in this report be transferable with the property. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. A determination of transferability is beyond the scope of relief that the department may grant under ORS 197.352. The Oregon Department of Justice has advised the department that "[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost."

development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after she acquired each tax lot.

Tax Lot:	Acquisition Date:
301, 902 and 1102	January 3, 1989
102	May 7, 2001

These laws will not apply to Sara Jane Pursley's only to the extent necessary to allow her to use tax lots 102, 301, 902 and 1102 for the use described in this report, and only to the extent that use was permitted when she acquired those tax lots. The department acknowledges that the relief to which Sara Jane Pursley is entitled under ORS 197.352 may not allow her to use tax lots 102, 301, 902 and 1102 in the manner set forth in the claim.

The department has further determined that this claim is not valid as to Kathleen Seagraves Higdon for tax lots 100, 102, 300, 500, 900 (Section 33), 900 (Section 34), 902, 1100, 1102 and 1200; and as to Sara Jane Pursley for tax lots 100, 101, 300, 500, 900 (Section 33), 900 (Section 34), 903, 1100, 1101 and 1200 because neither claimant has established her ownership of those tax lots. (See the complete recommendation in Section VI. of this report.)

### III. COMMENTS ON THE CLAIM

#### Comments Received

On October 27, 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, seven written comments were received in response to the 10-day notice.

The comments 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 letters in the department's claim file.)

### IV. TIMELINESS OF CLAIM

#### Requirement

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

1. For claims arising from land use regulations enacted prior to the effective date of 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 June 22, 2006, for processing under OAR 125, division 145. The claim identifies “all land use regulations that restrict development including but not limited to Senate Bill 100 (1973) and all regulatory enactments pursuant thereto and adopted thereafter including but not limited to” House Bill 3661, ORS 197 and 215 and provisions of OAR 660, divisions 6, and 33, 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**

Claimant Kathleen Seagraves Higdon acquired tax lots 101, 301, 903 and 1101 from the Seagraves family on the following dates:

Date:	Party:	Document:	Tax Lots:
January 3, 1989	Kathleen Seagraves Higdon	Warranty Deed 89-02317	301
		Warranty Deed 89-02312	903
		Warranty Deed 89-02315	1101
May 7, 2001	Kathleen Seagraves Higdon	Bargain and Sale Deed 2001-034616	101

Claimant Kathleen Seagraves Higdon acquired tax lot 102 on January 3, 1989, as reflected by a warranty deed included with the claim. However on May 7, 2001, she conveyed her interest in tax lot 102 to Sara Jane Pursley as reflected by a warranty deed included with the claim. The Clackamas County Assessor’s Office confirms Kathleen Seagraves Higdon’s current ownership of tax lots 101, 301, 903 and 1101. Kathleen Seagraves Higdon no longer owns tax lot 102.

Claimant Sara Jane Pursley acquired tax lots 102, 301, 902 and 1102 from the Seagraves family on the following dates:

Date:	Party:	Documents Included With the Claim:	Tax Lots:
January 3, 1989	Sara Jane Pursley	Warranty Deed 89-02317	301
		Warranty Deed 89-02313	902
		Warranty Deed 89-02316	1102
May 7, 2001	Sara Jane Pursley	Bargain and Sale Deed 2001-034615	102

Claimant Sara Jane Pursley acquired tax lot 101 on January 3, 1989, as reflected by a warranty deed included with the claim. However on May 7, 2001, she conveyed her interest in tax lot 101 to Kathleen Seagraves Higdon as reflected by a warranty deed included with the claim. The Clackamas County Assessor's Office confirms Sara Jane Pursley's current ownership of tax lots 102, 301, 902 and 1102. Sara Jane Pursley no longer owns tax lot 101.

The claim does not include any deeds or otherwise establish Kathleen Seagraves Higdon and Sara Jane Pursley's ownership of tax lots 100, 300, 500, 900 (Section 33), 900 (Section 34), 1100 and 1200; Kathleen Seagraves Higdon's ownership of tax lots 902 and 1102; or Sara Jane Pursley's ownership of tax lots 903 and 1101.

### **Conclusions**

Claimant Kathleen Seagraves Higdon is an "owner" of tax lots 101, 301, 903 and 1101 as that term is defined by ORS 197.352(11)(C), as of January 3, 1989, for tax lots 301, 903 and 1101, and as of May 7, 2001, for tax lot 101. Claimant Sara Jane Pursley is an "owner" of tax lots 102, 301, 902 and 1102 as that term is defined by ORS 197.352(11)(C), as of January 3, 1989, for tax lots 301, 902 and 1102, and as of May 7, 2001, for tax lot 102. Claimant Kathleen Seagraves Higdon has not established that she is an "owner" of tax lots 100, 102, 300, 500, 900 (Section 33), 900 (Section 34), 902, 1100, 1102 and 1200; nor has Sara Jane Pursley established that she is an "owner" of tax lots 100, 101, 300, 500, 900 (Section 33), 900 (Section 34), 903, 1100, 1101 and 1200 as that term is defined in ORS 197.352(11)(C). Edward Seagraves is a "family member" of the claimants as that term is defined by ORS 197.352(11)(A), and acquired tax lots 101 and 102 on May 18, 1960, tax lots 1101 and 1102 on March 10, 1964, tax lot 301 on April 27, 1966, and tax lots 902 and 903 on June 30, 1966.

### **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 525.03-acre subject property into quarter-acre parcels and to develop a dwelling on each parcel. It indicates that the use is not allowed under current land use regulations.<sup>4</sup>

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 by Clackamas County as EFU 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>5</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-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 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). 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 under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

The claimants' family acquired tax lots 101 and 102 in 1960, tax lots 1101 and 1102 in 1964, and tax lots 301, 902 and 903 in 1966, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to tax lots 101, 102, 301, 902, 903, 1101 and 1102 in 1960, 1964 and 1966.

---

<sup>4</sup> The claimants summarily cite numerous state land use laws as applicable to this claim, but do not establish how the laws either apply to the claimants' desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations, in particular "all land use regulations that restrict development", ORS 197 and OAR 660, division 6, either do not apply to the claimants' property or do not restrict the use of the claimants' property in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' use of the subject property, based on the claimants' asserted desired use.

<sup>5</sup> The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

## **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 the claimants' family acquired tax lots 101, 102, 301, 902, 903, 1101 and 1102. These laws restrict the use of the subject property relative to the uses allowed when the claimants' family acquired those tax lots.

As explained in Section V.(1), Kathleen Seagraves Higdon is not an "owner" of tax lot 102 nor has she established that she is an "owner" of tax lots 100, 300, 500, 900 (Section 33), 900 (Section 34), 902, 1100, 1102 and 1200; and Sara Jane Pursley is not an "owner" of tax lot 101 nor has she established that she is an "owner" of 100, 300, 500, 900 (Section 33), 900 (Section 34), 903, 1100, 1101 and 1200 as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict each of the claimants' use of those tax lots with the effect of reducing the fair market value of those tax lots.

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 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 \$11,836,470 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 the claimants' assessment of the subject property's value.

## **Conclusions**

As explained in Section V.(1) of this report, the claimants are Kathleen Seagraves Higdon and Sara Jane Pursley whose family member acquired tax lots 101 and 102 in 1960, 1101 and 1102 in 1964, and tax lots 301, 902 and 903 in 1966. As explained in Section V.(1) of this report, Kathleen Seagraves Higdon has not established that she is an "owner" of tax lots 100, 102, 300, 500, 900 (Section 33), 900 (Section 34), 902, 1100, 1102 and 1200; and Sara Jane Pursley has not established that she is an "owner" of 100, 101, 300, 500, 900 (Section 33), 900 (Section 34), 903, 1100, 1101 and 1200. These claimants are not entitled to compensation under ORS 19.352 for those tax lots for which they have not established their ownership. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of tax lots 101, 102,

301, 902, 903, 1101 and 1102 and have the effect of reducing the fair market value of those tax lots. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants' family acquired the subject property 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 \$11,836,470.

Without an appraisal or other documentation, 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 tax lots 101, 102, 301, 902, 903, 1101 and 1102 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 the claimants' family acquired tax lots 101, 102, 301, 902, 903, 1101 and 1102, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Clackamas County has implemented through its current EFU zone.

#### **Conclusions**

It appears that none of the general statutory, goal and rule restrictions on division and development of the claimants' property were in effect when the claimants' family acquired tax lots 101 and 102 in 1960, tax lots 1101 and 1102 in 1964, and tax lots 301, 902 and 903 in 1966. As a result, these laws are not exempt under ORS 197.352(3)(E) 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.

As explained in Section V.(1) of this report, Kathleen Seagraves Higdon has not established that she is an "owner" of tax lots 100,102, 300, 500, 900 (Section 33), 900 (Section 34), 902, 1100, 1102 and 1200; and Sara Jane Pursley has not established that she is an "owner" of tax lots 100, 101, 300, 500, 900 (Section 33), 900 (Section 34), 903, 1100, 1101 and 1200 as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt as to each of the claimants for those tax lots is not relevant.

### **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 record, the department finds that the claim is not valid in part because Kathleen Seagraves Higdon, is not an “owner” of tax lot 102 nor has she established that she is an “owner” of tax lots 100, 300, 500, 900 (Section 33), 900 (Section 34), 902, 1100, 1102 and 1200; and Sara Jane Pursley is not an “owner” of tax lot 101 nor has she established that she is an “owner” of 100, 300, 500, 900 (Section 33), 900 (Section 34), 903, 1100, 1101 and 1200. The department further finds laws enforced by the Commission or the department restrict the claimants’ desired use of tax lots 101, 102, 301, 902, 903, 1101 and 1102. 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 \$11,836,470. 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 tax lots 101, 102, 301, 902, 903, 1101 and 1102 was allowed under the standards in effect when the claimants’ family acquired those tax lots. 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 tax lots 101, 102, 301, 902, 903, 1101 and 1102 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 Kathleen Seagraves Higdon to use tax lots 101, 301, 903 and 1101 for a use permitted at the time she acquired tax lots 301, 903 and 1101 on January 3, 1989, and tax lot 101 on May 7, 2001; and to allow Sara Jane Pursley to use tax lots 102, 301, 902 and 1102 for a use permitted at the time she acquired tax lots 301, 902 and 1102 on January 3, 1989, and tax lot 102 on May 7, 2001.

At the time Kathleen Seagraves Higdon acquired tax lots 301, 903 and 1101, and Sara Jane Pursley acquired tax lots 301, 902 and 1102, they were subject to Clackamas County’s acknowledged EFU zone.<sup>6</sup> When the claimants acquired those tax lots, the claimants’ 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>7</sup> In 1989, ORS 215.263 (1987 edition) required

---

<sup>6</sup> When Clackamas County’s EFU zone was acknowledged by the Commission for compliance with Goal 3 on December 31, 1981, tax lot 301 was zoned EFU-20, which allowed a 20-acre minimum lot size for new lots or parcels, and tax lots 902, 903, 1101 and 1102 were zoned General Agriculture District (GAD), which allowed a 40-acre minimum lot size for new lots or parcels.

<sup>7</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).

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.

The claim does not establish whether or to what extent the claimants’ desired division and development of tax lots 301, 902, 903, 1101 and 1102 was allowed under the standards in effect when Kathleen Seagraves Higdon acquired tax lots 301, 903 and 1101 on January 3, 1989; and when Sara Jane Pursley acquired tax lots 301, 902 and 1102 on January 3, 1989.

At the time Kathleen Seagraves Higdon acquired an interest in tax lot 101 and Sara Jane Pursley acquired tax lot 102, those tax lots were zoned by Clackamas County as EFU and subject to the current lot size and dwelling standards under Goal 3, ORS 215 and OAR 660, division 33, and as described in Section V.(2) of this report.

In addition to the applicable provisions of Goal 3 and ORS 215 in effect when the claimants acquired tax lots 301, 902, 903, 1101 and 1102 on January 3, 1989; and provisions of Goal 3, ORS 215 and OAR 660 in effect with the claimants acquired tax lots 101 and 102 on May 7, 2001, 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.

## **Conclusions**

Based on the record before the department, Kathleen Seagraves Higdon has not established that she is entitled to relief under ORS 197.352(1) for tax lots 100, 102, 300, 500, 900 (Section 33), 900 (Section 34), 902, 1100, 1102 and 1200; and Sara Jane Pursley has not established that she is entitled to relief under ORS 197.352(1) for tax lots 100, 101, 300, 500, 900 (Section 33), 900 (Section 34), 903, 1100, 1101 and 1200 as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that this claim be denied as to those tax lots. The department further recommends that the claim be approved for tax lots 101, 102, 301, 902, 903, 1101 and 1102, 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 Kathleen Seagraves Higdon's division of tax lots 101, 301, 903 and 1101 into quarter-acre parcels and to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after she acquired each tax lot.

Tax Lot:	Acquisition Date:
301, 903 and 1101	January 3, 1989
101	May 7, 2001

These laws will not apply to Kathleen Seagraves Higdon only to the extent necessary to allow her to use tax lots 101, 301, 903 and 1101 for the use described in this report, and only to the extent that use was permitted when she acquired those tax lots. The department acknowledges that the relief to which Kathleen Seagraves Higdon is entitled under ORS 197.352 may not allow her to use tax lots 101, 301, 903 and 1101 in the manner set forth in the claim.

In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Sara Jane Pursley's division of tax lots 102, 301, 902 and 1102 into quarter-acre parcels and to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after she acquired each tax lot.

Tax Lot:	Acquisition Date:
301, 902 and 1102	January 3, 1989
102	May 7, 2001

These laws will not apply to Sara Jane Pursley only to the extent necessary to allow her to use tax lots 102, 301, 902 and 1102 for the use described in this report, and only to the extent that use was permitted when she acquired those tax lots. The department acknowledges that the relief to which Sara Jane Pursley is entitled under ORS 197.352 may not allow her to use tax lots 102, 301, 902 and 1102 in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lots 101, 102, 301, 902, 903, 1101 and 1102 for the use described in this report, subject to the standards in effect when Kathleen Seagraves Higdon acquired tax lots 301, 903 and 1101 on January 3, 1989, and tax lot 101 on May 7, 2001; and when Sara Jane Pursley acquired tax lots 301, 902 and 1102 on January 3, 1989, and tax lot 102 on May 7, 2001. On January 3, 1989, tax lots 301, 902, 903, 1101 and 1102 were subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Clackamas County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect. On May 7, 2001, tax lots 101 and 102 were subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, 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 November 24 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.