

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR)	FINAL ORDER
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M129797
(BALLOT MEASURE 37) OF)	
Kenneth M. Jenck, Sharon L. Jenck and)	
Timothy Jenck, CLAIMANTS)	

Claimants: Kenneth M. Jenck, Sharon L. Jenck and Timothy Jenck (the Claimants)

Property: Township 2S, Range 9W, Section 6AB, Tax lots 500, 502 (part zoned F-1) and 503
Township 2S, Range 9W, Section 6, Tax lot 800
Tillamook County (the Property)

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

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

ORDER

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws the claimants' division of 61.27-acre subject property into 100 approximately half-acre or to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each of the claimants acquired each of the subject tax lots. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Kenneth Jenck acquired tax lots 500, 503 and 800 on November 25, 1975 and tax lot 502 on December 19, 1996; when Sharon Jenck acquired tax lot 502 on September 15, 1980, tax lots 500 and 800 on September 19, 1994, and tax lot 503 on December 19, 1996; and when Timothy Jenck acquired the property on January 23, 1997. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow Kenneth Jenck to use tax lot 502, will not allow Sharon Jenck to use tax lots 500, 503 and

800, and will not allow Timothy Jenck to use any of the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants Kenneth and Sharon Jenck to use the subject property for the use described in this report, subject to the standards in effect when each of the claimants acquired each of the tax lots. In 1975 and 1980, when Kenneth Jenck acquired tax lots 500, 503 and 800, and when Sharon Jenck acquired tax lot 502, the property was subject to the provisions of Goal 3 and ORS 215 then in effect. In 1994, 1995 and 1997 when Kenneth Jenck acquired tax lot 502, when Sharon Jenck acquired tax lots 500, 503 and 800, and when Timothy Jenck acquired the subject property, the property was subject to compliance with the current division and dwelling standards under Goal 3 and OAR 660, division 33, as implemented through the county's acknowledged F-1 zone, and the provisions of ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain/s 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/s 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 him/her/them/it 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/s from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

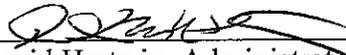
This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:
Lane Shetterly, Director



Cora R. Parker, Deputy Director
DLCD
Dated this 26th day of January, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 26th day of January, 2007.

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

January 26, 2007

STATE CLAIM NUMBER: M129797

NAMES OF CLAIMANTS: Kenneth M. Jenck, Sharon L. Jenck and
Timothy Jenck

MAILING ADDRESS: Kenneth and Sharon Jenck
3515 Gienger Road
Tillamook, Oregon 97141

Timothy Jenck
3555 Gienger Road
Tillamook, Oregon 97141

PROPERTY IDENTIFICATION: Township 2S, Range 9W, Section 6AB
Tax lots 500, 502 (part zoned F-1) and 503
Township 2S, Range 9W, Section 6
Tax lot 800
Tillamook County

OTHER CONTACT INFORMATION: Julie Lafoon
7480 Trask River Road
Tillamook, Oregon 97141

DATE RECEIVED BY DAS: August 2, 2006

180-DAY DEADLINE: January 29, 2007

I. SUMMARY OF CLAIM

The claimants, Kenneth Jenck, Sharon Jenck and Timothy Jenck, seek compensation in the amount of \$5 million 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 61.27-acre subject property into 100 approximately half-acre parcels for residential development.¹ The subject property is located at 3555 Gienger Road, near the City of Tillamook, in Tillamook County. (See claim.)

¹ The claim also suggests that the claimants to sell 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

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 Kenneth and Sharon Jenck's division of the 61.27-acre subject property into 100 approximately half-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after each of the claimants acquired the subject property. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Kenneth Jenck acquired tax lots 500, 503 and 800 on November 25, 1975 and tax lot 502 on December 19, 1996; when Sharon Jenck acquired tax lot 502 on September 15, 1980, tax lots 500 and 800 on September 19, 1994, and tax lot 503 on December 19, 1996; and when Timothy Jenck acquired the property on January 23, 1997. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow Kenneth Jenck to use tax lot 502, will not allow Sharon Jenck to use tax lots 500, 503 and 800, and will not allow Timothy Jenck to use any of the subject property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On November 7, 2006, pursuant to Oregon Administrative Rules (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, five written comments were received in response to the 10-day notice.

The comments are relevant to whether the laws that are the basis for the claim are exempt under ORS 197.352(3). The comments have been considered by the department in preparing this report. (See the comment letter in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

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

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies

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."

the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or

2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on August 2, 2006, for processing under OAR 125, division 145. The claim identifies Tillamook County's Farm (F-1) zoning and state land use regulations that require that zoning as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

The subject property consists of all or a portion of four tax lots, 500, 502, 503 and 800. Claimant Kenneth Jenck originally acquired an interest in all of the subject property on September 17, 1961, and his wife, Sharon Jenck originally acquired the property on December 31, 1964, as evidenced by a contract and deeds included with the claim. However, on November 25, 1975, the claimants conveyed all of their interest in the property to Rose Jenck, by deed included with the claim. On that same day Rose Jenck conveyed the subject property to Kenneth Jenck only, by land sale contract included with the claim. On September 15, 1980, Kenneth Jenck conveyed tax lot 502 to Sharon Jenck, as evidenced by warranty deed included with the claim.² On September 19, 1994, Kenneth Jenck conveyed an interest in tax lot 500 to Sharon Jenck, and by

² The warranty deed by which Sharon Jenck acquired tax lot 502 in 1980 states that the grantors are Kenneth and Sharon Jenck. However, there is no documentation, in either the Certified Chain of Title or the deed records included in the claim, to provide any indication that Sharon Jenck had any ownership interest in the property at the time of that deed. Likewise, on that same date, by warranty deed Kenneth and Sharon Jenck purported to convey tax lot 503 to Kenneth Jenck only. However, again, there is no documentation in the claim file to indicate Sharon Jenck had any ownership interest in tax lot 503 when she and Kenneth Jenck purported to convey tax lot 503 to only Kenneth Jenck.

fulfillment deed, Rose Jenck conveyed tax lot 800 to both Sharon and Kenneth Jenck.³ On December 19, 1996, Kenneth Jenck conveyed an interest in tax lot 503 to Sharon Jenck and Sharon Jenck conveyed an interest in tax lot 502 to Kenneth Jenck. Subsequently, on January 23, 1997, Kenneth and Sharon Jenck conveyed all of the subject property to their son, Timothy Jenck by land sale contract, a memorandum of which is included in the claim. However, subsequent to the issuance of the draft report on this claim, the claimants provided a copy of the actual contract, by which they conveyed the property to their son. Under the express language of that contract, Kenneth and Sharon Jenck retained the right to use and develop the subject property until the contract is fully paid.⁴

The Tillamook County Assessor's Office confirms claimant Timothy Jenck's current ownership of the subject property.

Conclusions

The claimants, Kenneth, Sharon and Timothy Jenck, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C). Kenneth Jenck has been an owner of tax lots 500, 503 and 800 since November 25, 1975, and has been an owner of tax lot 502 since December 19, 1996. Sharon Jenck has been an owner of tax lot 502 since September 15, 1980, tax lots 500 and 800 since September 19, 1994, and tax lot 503 since December 19, 1996. Timothy Jenck has been an owner of the subject property since January 23, 1997. The claim includes documentation to establish family ownership, as that term is defined in ORS 197.352(11)(A), since September 27, 1961.

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 61.27-acre subject property into 100 half-acre parcels for residential development and that Tillamook County's F-1 zone prevent the desired use of the property.

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 Tillamook County as F-1 as required by Goal 3, in accordance with ORS 215 and OAR 660,

³ There is no documentation in the deeds provided with the claim and subsequently acquired, or in the Certified Chain of Title to indicate that Sharon Jenck reacquired an interest in tax lot 800 prior to the 1994 fulfillment deed.

⁴ Under the unique terms of that contract, paragraph 2.4 states that "[T]he sellers reserves [sic] all development, water, and mineral rights of every kind, nature and description during the term of the contract. Upon completion of the contract, through time or buy-out, Purchaser shall receive all these rights. Thus, during the term of the contract, Kenneth and Sharon Jenck retained the right to use the subject property in a manner that could be restricted by land use regulations. It is not clear from the terms of the contract whether or the extent to which Timothy Jenck acquired rights to use the property in a manner that could be restricted by land use regulations during the term of the contract.

division 33, because the claimants' property is "agricultural land" as defined by Goal 3.⁵ Goal 3 became effective on January 25, 1975, and required that "agricultural land" as defined by Goal 3 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 the development of dwellings on existing or any proposed parcel on that land. These land use regulations have been in effect since before claimant Timothy Jenck acquired an interest in the property in 1997.

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 claimants' family first acquired the subject property in 1961, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

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 claimants' family acquired the subject property in 1961, and do not allow the desired division or residential development of the property. These laws restrict the use of the subject property relative to the uses allowed when the claimants' family first acquired the property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulations (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 \$5 million as the reduction in the property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on a real estate broker's assessment of the subject property's value, included with the claim.

⁵ The claimants' property is "agricultural land" because it contains National Resources Conservation Service Class I-IV soils.

Conclusions

As explained in Section V.(1) of this report, the claimants are Kenneth, Sharon and Timothy Jenck, whose family first acquired the property on September 27, 1961. Under ORS 197.352, the claimants are 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 claimants' family acquired the subject property restrict their desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the property is a reduction of \$5 million.

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 since the claimants' family first acquired the subject property.

4. Exemptions Under ORS 197.352

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 Tillamook County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after claimants' family first acquired the subject property in 1961.

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 it in 1961. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimants' family acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.35(3)(A) to (D) are also exempt and would not provide a basis for compensation.

VI. FORM OF RELIEF

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict claimants' desired use of the subject property. The claim asserts that

existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$5 million. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when the claimants' 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 the claimants to use the subject property for a use permitted at the time Kenneth Jenck acquired tax lots 500, 503 and 800 on November 25, 1975, and tax lot 502 on December 19, 1996; at the time Sharon Jenck acquired tax lot 502 on September 15, 1980, tax lots 500 and 800 on September 19, 1994, and tax lot 503 on December 19, 1996; and at the time Timothy Jenck acquired the property on January 23, 1997. .

Kenneth Jenck acquired tax lots 500, 503 and 800 on November 25, 1975, and Sharon Jenck acquired tax lot 502 on September 15, 1980, after the adoption of the statewide planning goals, but before the Commission acknowledged Tillamook County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.⁶ Because the Commission had not acknowledged the county's plan and land use regulations when Kenneth Jenck acquired tax lots 500, 503 and 800, and when Sharon Jenck acquired tax lot 502, the statewide planning goals, and Goal 3 in particular, applied directly to the claimants' property when Kenneth and Sharon Jenck acquired their respective interests in it.⁷

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the claimants' opportunity to divide the subject property when Kenneth Jenck acquired tax lots 500, 503 and

⁶ Tillamook County's comprehensive plan and land use regulations were acknowledged for compliance with Goal 3 on January 6, 1983.

⁷ 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 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).

800 in 1975 and when Sharon Jenck acquired tax lot 502 in 1980 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 November 25, 1975 and September 15, 1980, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition).

No information has been presented in the claim to establish that the claimants' desired division of the 61.27-acre subject property into 100 approximately half-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 claimants desired development of 100 dwellings on the subject property satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1973 edition). The department acknowledges that it is unlikely that the claimants' desired use could have satisfied these standards.

When Sharon Jenck acquired tax lots 500 and 800 on September 19, 1994 and tax lot 503 on December 19, 1996, when Kenneth Jenck acquired tax lot 502 on December 19, 1996, and when Timothy Jenck acquired an interest in the subject property on January 23, 1997, the subject property it was zoned EFU by Tillamook County 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. The department acknowledges that the claimants' desired use was prohibited at the time the claimants acquired their interests in the property in 1994, 1996 and 1997.

In addition to the laws identified above, applicable to the property when each of the claimants acquired their interests in each of the tax lots, 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. If and when any of the claimants seek a development permit to carry out a specific use, it may become evident that other state laws apply to that use and that may continue to apply to that use. 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 uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

Conclusions

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws the claimants' division of 61.27-acre subject property into 100 approximately half-acre or to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each of the claimants acquired each of the subject tax lots. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Kenneth Jenck acquired tax lots 500, 503 and 800 on November 25, 1975 and tax lot 502 on December 19, 1996; when Sharon Jenck acquired tax lot 502 on September 15, 1980, tax lots 500 and 800 on September 19, 1994, and tax lot 503 on December 19, 1996; and when Timothy Jenck acquired the property on January 23, 1997. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow Kenneth Jenck to use tax lot 502, will not allow Sharon Jenck to use tax lots 500, 503 and 800, and will not allow Timothy Jenck to use any of the subject property in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to the claimants Kenneth and Sharon Jenck to use the subject property for the use described in this report, subject to the standards in effect when each of the claimants acquired each of the tax lots. In 1975 and 1980, when Kenneth Jenck acquired tax lots 500, 503 and 800, and when Sharon Jenck acquired tax lot 502, the property was subject to the provisions of Goal 3 and ORS 215 then in effect. In 1994, 1995 and 1997 when Kenneth Jenck acquired tax lot 502, when Sharon Jenck acquired tax lots 500, 503 and 800, and when Timothy Jenck acquired the subject property, the property was subject to compliance with the current division and dwelling standards under Goal 3 and OAR 660, division 33, as implemented through the county's acknowledged F-1 zone, and the provisions of ORS 215 then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain/s 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/s 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 him/her/them/it 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/s 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 January 4, 2007. 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.