

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. M129942
(BALLOT MEASURE 37) OF)
Janet S. Granger, William Granger, Janet M. Granger Fish,)
Scott Granger, Russell Granger and Thomas Fish, CLAIMANTS)

Claimants: Janet S. Granger, William Granger, Janet M. Granger Fish, Scott Granger, Russell Granger and Thomas Fish (the Claimants)

Property: Township 36S, Range 3W, Section 27: tax lot 100
Township 36S, Range 3W, Section 26: tax lot 101
Township 36S, Range 3W, Section 22D: tax lot 200
Township 36S, Range 3W, Section 23: tax lot 301
Jackson 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 apply to Janet, William and Scott Granger and Janet Granger Fish's division of tax lots 100, 101, 200 and 301, consisting of 311.65 acres, into one-acre parcels and to their development a dwelling on each parcel: applicable provisions of Goals 3, 5, 11 and 14, ORS 215 and OAR 660, divisions 16, and 33 enacted or adopted after each claimant acquired the property. These laws will not apply to the claimants only to the extent necessary to allow them to use tax lots 100, 101, 200 and 301 for the use described in this report, and only to the extent that use was permitted when Janet Granger acquired the property on June 30, 1964; when William Granger and Janet Granger Fish acquired the property on December 9, 1969; and when Scott Granger acquired the property on December 18, 1982.

Goal 11 will not apply only to the extent that it prohibits the *claimants* from establishing an urban level of public facilities and services to serve the development of the property. Goal 11 will continue to apply to public service providers seeking to extend or establish public facilities to serve the subject property.

2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lots 100, 101, 200 and 301 for the use described in this report, subject to the standards in effect on June 30, 1964, as to Janet Granger and subject to the standards in effect on December 9, 1969, as to William Granger and Janet Granger Fish. When claimant Scott Granger acquired the property on December 18, 1982, it was subject to Goals 3, 5, 11 and 14, their implementing rules and provisions of ORS 215 then in effect.

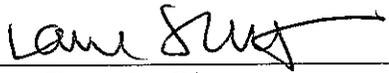
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lots 100, 101, 200 and 301 may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless 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 tax lots 100, 101, 200 and 301 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 tax lots 100, 101, 200 and 301, 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 tax lots 100, 101, 200, 301 by the claimants.

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the 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
DLCD
Dated this 20th day of February, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 20th day of February, 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.”

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
COMPENSATION UNDER ORS 197.352)CLAIM NO. M129942
(BALLOT MEASURE 37) OF)
Janet S. Granger, William Granger, Janet M. Granger Fish)
Scott Granger, Russell Granger and Thomas Fish, CLAIMANTS)

Claimants: Janet S. Granger, William Granger, Janet M. Granger Fish, Scott Granger,
Russell Granger and Thomas Fish (the Claimants)

Property: Township 36S, Range 3W Section 22D: tax lot 400
Jackson 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 laws administered by DLCD and the Land Conservation and
Development Commission (LCDC) for the reasons set forth in the DLCD Report.

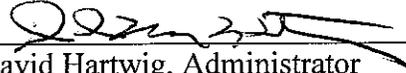
This Order is entered by the Director of the DLCD as a final order of DLCD and the
Land Conservation and Development Commission under ORS 197.352, OAR 660-002-
0010(8), and OAR chapter 125, division 145, and by the Administrator for the State
Services Division of the DAS as a final order of DAS under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

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD
Dated this 20th day of February, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 20th day of February, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to the following judicial remedies:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, 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)

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

February 20, 2007

STATE CLAIM NUMBER: M129942

NAMES OF CLAIMANTS: Janet S. Granger
William Granger
Janet M. Granger Fish
Scott Granger
Russell Granger
Thomas Fish

MAILING ADDRESS: Janet S. Granger
2448 Neito Way
Medford, Oregon 97504

William Granger
2581 Heritage Park Lane
Sacramento, CA 95835

Janet M. Granger Fish
603 Daranelles Street
Gold Hill, OR 97525

Russell Granger
3109 Deakin Street
Berkeley, CA 94705

Scott Granger
922 Calle Venezia
San Clemente, CA 92672

Thomas Fish
3109 Deakin Street
Berkeley, CA 94705

PROPERTY IDENTIFICATION: Township 36S, Range 3W¹
Section 27: tax lot 100
Section 26: tax lot 101
Section 22D: tax lot 200 and 400

¹ The subject property includes five tax lots. Tax lot 100 consists of 155.87 acres; tax lot 101 consists of 75.56 acres; tax lot 200 consists of 23.92 acres; tax lot 301 consists of 56.30 acres; and tax lot 400 consists of 35.03 acres.

PROPERTY IDENTIFICATION: Section 23: tax lot 301
Jackson County

OTHER CONTACT INFORMATION: Mark Barthlomew
717 Murphy Road
Medford, OR 97504

DATE RECEIVED BY DAS: August 28, 2006

180-DAY DEADLINE: February 24, 2007

I. SUMMARY OF CLAIM

The claimants, Janet, William, Scott and Russell Granger, Janet Granger Fish and Thomas Fish, seek compensation in the amount of \$61.67 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.² The claimants desire compensation or the right to divide the 346.68-acre subject property into 1-acre parcels and to develop a dwelling on each parcel. The subject property is located at 9450 Old Stage Road, abutting the Interstate 5 Freeway near Gold Hill, in Jackson County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid in part. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Janet, William and Scott Granger and Janet Granger Fish's division of tax lots 100, 101, 200 and 301, consisting of 311.65 acres, into 1-acre parcels and to their development a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands), 5 (Natural Resources) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660, division 16, and 33, enacted or adopted after each claimant acquired the property. These laws will not apply to the claimants only to the extent necessary to allow them to use tax lots 100, 101, 200 and 301 for the use described in this report, and only to the extent that use was permitted when Janet Granger acquired them on June 30, 1964; when William Granger and Janet Granger Fish acquired them on December 9, 1969; and when Scott Granger acquired them on December 18, 1982. The department recommends that the claim be denied with regard to Russell Granger and Thomas Fish because (despite the request of the department) these claimants have failed to provide evidence establishing when they acquired the right to use the property for their desired use.

² Following issuance of the draft staff report, the claimants' attorney requested to amend the claim to add an additional claimant, Granger Associates, Inc., which is the owner of tax lot 400. The department cannot amend a claim to add a claimant at this stage. If Granger Associates, Inc. wishes to make a demand for compensation under ORS 197.352, it may file a new claim.

The department has further determined that the claim is not valid with regard to any of the claimants for tax lot 400 because they have not established their ownership of the property. The evidence in the department's record shows that this property is currently owned by Granger Associates, Inc. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On December 7, 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.

Finding of Fact

This claim was submitted to DAS on August 28, 2006, for processing under OAR 125, division 145. The claim identifies Goals 3, 4 (Forest Lands), 5, 11 (Public Facilities and Services) and 14; ORS chapters 92, 195, 197 and 215; and provisions of OAR 660, divisions 4, 11, 12, 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

Janet Granger first acquired the subject property on June 30, 1964, as reflected by a warranty deed, deed card and title report included with the claim. On December 9, 1969, Janet Granger conveyed an interest in the subject property to her son William Granger and to her daughter Janet Granger Fish, as evidenced by warranty deeds included with the claim. On December 18, 1982, Janet Granger conveyed an interest in tax lots 100, 101, 200 and 301 to her grandson Scott Granger, as reflected by a gift deed included with the claim. On December 18, 1982, Janet Granger also conveyed an interest in tax lots 100, 101, 200 and 301 to William Granger as custodian for her grandson Russell Granger and to Janet Granger Fish as custodian for her grandson Thomas Fish, as reflected by gift deeds included with the claim. Russell Granger and Thomas Fish would have acquired a present interest in the property (a right to carry out their desired use) upon reaching the age of majority; however, the claimants have not submitted documentation of those dates.³ Although, Russell Granger and Thomas Fish have presumably reached the age of majority, the department cannot determine when they acquired the property based on the information included with the claim. The Jackson County Assessor’s Office confirms the claimants’ current ownership of tax lots 100, 101, 200 and 301.

According to the information provided with the claim, Janet and William Granger and Janet Granger Fish transferred tax lot 400 to Granger Associates, Inc. on September 10, 1976, as reflected by a warranty deed included with the claim. Granger Associates, Inc. is an Oregon corporation registered with the Oregon Secretary of State.⁴ Granger Associates, Inc. is not a claimant. The claimants are not the owners of tax lot 400.

Conclusions

The claimants, Janet, William, Scott and Russell Granger, Janet Granger Fish and Thomas Fish are “owners” of tax lots 100, 101, 200 and 301 as that term is defined by ORS 197.352(11)(C).

³ The department requested documentation on the ages of Russell Granger and Thomas Fish from the claimants’ attorney on January 5, 2007.

⁴ Under ORS 197.352(11)(A), legal entities can be “family members” of the individuals who are owners of property under ORS 197.352(11)(C). However, legal entities cannot have family members under the statute. Therefore, the individuals that transferred the subject property to the legal entity is not considered a family member under the definition of family member in ORS 197.352(11)(A).

Janet Granger is an "owner" of as of June 30, 1964. William Granger and Janet Granger Fish are "owners" as of December 9, 1969. Scott Granger is an "owner" as of December 18, 1982. The department lacks sufficient documentation to determine the dates Russell Granger and Thomas Fish acquired the property. Janet Granger is a "family member" of William, Scott, Russell and Thomas Granger and Janet Granger Fish, as that term is defined by ORS 197.352(11)(A). The claimants have not established that they own an interest in tax lot 400 that entitles them to relief under ORS 197.352. Granger Associates, Inc. is the present "owner" of tax lot 400 as that term is defined by ORS 197.352(11)(C).

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the 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 tax lots 100, 101, 200 and 301.

Findings of Fact

The claim indicates that the claimants desire to divide the 346.68-acre subject property into one-acre parcels and to develop a dwelling on each parcel, and that the desired use is not allowed under current land use regulations.⁵ The claim identifies several alternate uses of the property; however, the written demand is based on the effect of state land use regulations on the fair market value of the property developed with one-acre homesites. As a result, this is the use evaluated in this report.⁶

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, tax lots 100, 101, 200 and 301, is zoned EFU by Jackson County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.⁷ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

⁵ The claim lists numerous state land use laws as applicable to this claim, but does 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 either do not apply to the claimants' desired use of the property or do not restrict the use of the claimants' desired use of the 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' description of their desired use.

⁶ In response to the draft report, the claimants attorney asserted that, while the analysis of the reduction in value was based on the use identified and described in this report, in fact the claimants desire a waiver in order to develop their property with one or more of several possible alternative uses. However, ORS 197.352 does not eliminate land use regulations to allow any possible use that may have been permitted at the time the present owners acquired the property. Rather, by its terms, it permits the present owner "a use" that was permitted at the time the owner acquired the property. The use evaluated in this claim for compensation under ORS 197.352 is the use upon which the claimants evaluated how land use regulations have restricted the use of the subject property with the effect of reducing its fair market value. To the extent the claimants wish to develop their property in a different manner, they may submit a new claim, pursuant to the requirements of ORS 197.352.

⁷ The claimants' property is "agricultural land" because it contains National Resources Conservation Service Class I-IV soils.

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.

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.)

Wildlife and riparian habitat restrictions contained in the county's land use regulations may be required by Goal 5, which became effective January 25, 1975. The administrative rule implementing Goal 5, OAR 660, division 16 (Requirements and Application Procedures for Complying with Goal 5), became effective on May 18, 1981, and applied to landowners through local jurisdictions, once those jurisdictions implemented the Goal 5 process. The property is also subject to a Big Game Wildlife Habitat overlay zone, in accordance with Goal 5. Wildlife restrictions contained in the county's land use regulations may be required by OAR 660-023-0110, which became effective on September 1, 1996. Jackson County's Big Game Habitat Overlay zone was applied to the property in 1991, and generally requires a minimum parcel size of 40 acres for a non-farm or lot of record dwelling in areas inventoried as big game habitat.⁸

The claimants also list Goal 11 relating to public facilities and services and OAR 660, division 11, administrative rules relating to public facilities as restricting their desired use. Goal 11, which became effective on January 25, 1975, generally prohibits urban levels of public facilities and services on lands that are outside an urban growth boundary. Goal 11 has two components. The first component of Goal 11 restricts an owner's use of land outside of an urban growth boundary by prohibiting the owner from utilizing urban levels of public services or facilities. The second component restricts service providers from extending urban facilities to serve property outside an urban growth boundary. The former can restrict a claimants' use of property. The latter is a restriction on service providers. Goal 11 and OAR 660, division 11, would apply to the claimants' use of the subject property to the extent that they would restrict the claimants' development of urban-level public or community sewer or water facilities on tax lots 100, 101, 200 and 301. The claimants' desired use includes the extension of sewer, water or similar urban services to serve residential development at a one-acre density. As a result, Goal 11 applies to and restricts the claimants' desired use of the property.

⁸ OAR 660, division 23, Procedures and Requirements for Complying with Goal 5, and including Section 0110, Wildlife Habitat, became effective on September 1, 1996.

Goal 14, which also became effective on January 25, 1975, would likely apply to the division of the claimants' property into parcels less than two acres. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses.

Janet Granger acquired tax lots 100, 101, 200 and 301 in 1964 and William Granger and Janet Granger Fish acquired an interest in tax lots 100, 101, 200 and 301 in 1969, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. Scott Granger acquired an interest in tax lots 100, 101, 200 and 301 on December 18, 1982. At that time, Scott Granger's use of the property was subject to Goals 3, 5, 11 and 14 and their implementing rules then in effect, as well as the applicable provisions of ORS chapter 215 then in effect.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3, 5, 11 and 14, ORS 215 and OAR 660, division 33, were all enacted or adopted after Janet and William Granger and Janet Granger Fish acquired tax lots 100, 101, 200 and 301. These laws restrict the use of tax lots 100, 101, 200, and 301 relative to the uses allowed when Janet and William Granger and Janet Granger Fish acquired them.

Provisions of Goals 3, 5, 11 and 14, ORS 215 and OAR 660, division 33, enacted or adopted after December 18, 1982, restrict Scott Granger's use of tax lots 100, 101, 200 and 301 relative to the uses allowed when he acquired an interest in them.

Those elements of Goal 11 that prohibit a public service provider from extending or establishing public facilities or services outside of an urban growth boundary restrict the actions of local government rather than the claimants' use of the property. That component of Goal 11 is not subject to ORS 197.352 and will continue to apply to those service providers. Only the general prohibition under Goal 11 on the claimants' establishment of an urban level of public facilities and services is subject to ORS 197.352 and restricts the claimants' desired use of her property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the claimants' property, based on the use that the claimants have identified. There may be other laws that currently apply to the claimants' use of tax lots 100, 101, 200 and 301, and that may continue to apply to the claimants' use of these tax lots, 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 tax lots 100, 101, 200 and 301 until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws currently apply to that use and may continue to apply to that use.

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 \$61.67 million as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on a comparative market analysis included with the claim.

Conclusions

As explained in Section V. (1) of this report, the claimants are Janet Granger who acquired tax lots 100, 101, 200 and 301 in 1964, her children, William Granger and Janet Granger Fish and her grandchildren, Scott and Russell Granger and Thomas Fish. The claimants have not established their current ownership of tax lot 400. Without verification of ownership, the claimants are not "owners" of tax lot 400 and are not entitled to compensation under ORS 197.352. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of tax lots 100, 101, 200 and 301 and have the effect of reducing their fair market value. Based on the findings and conclusions in Section V. (2) of this report, laws enacted or adopted since Janet Granger acquired tax lots 100, 101, 200 and 301 in 1964 restrict the claimants' desired use. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$61.67 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 tax lots 100, 101, 200 and 301 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 tax lots 100, 101, 200 and 301 relative to the uses permitted when Janet Granger acquired them, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Jackson County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after Janet Granger acquired tax lots 100, 101, 200 and 301 in 1964.

Conclusions

Without a specific development proposal for tax lots 100, 101, 200 and 301, it is not possible for the department to determine all the laws that may apply to a particular use of the tax lots, 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 tax lots 100, 101, 200 and 301 were in effect when Janet Granger acquired in them 1964 and when William Granger and Janet Granger Fish acquired them in 1969. As a result, these laws are not exempt under ORS 197.352 and do not provide a basis for compensation. In addition,

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, the claimants have not established their ownership of tax lot 400. Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to this tax lot.

In addition, Jackson County notes that a portion of the subject property is located in a flood plain zone. ORS 197.352(3)(B) specifically exempts regulations “restricting or prohibiting activities for the protection of public health and safety. . . .” To the extent the county’s flood plain regulations are based on state law, these regulations would be exempt under ORS 197.352(3)(B). There may be other laws that continue to apply to the claimants’ use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of tax lots 100, 101, 200 and 301.

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 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 current 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 as to tax lot 400 because the claimants are not owners of tax lot 400. The department further finds that the claim is not valid as to Russell Granger and Thomas Fish because the department cannot determine when they acquired the property and thus, whether or the extent to which their desired use of the property was allowed at that time. The department further finds laws enforced by the Commission or the department restrict the other claimants’ desired use of tax lots 100, 101, 200 and 301. 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 \$61.67 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 tax lots 100, 101, 200 and 301, 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 claimants' desired use of tax lots 100, 101, 200 and 301 was allowed under the standards in effect when Janet Granger acquired them. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based have reduced the fair market value of tax lots 100, 101, 200 and 301 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 when Janet Granger acquired tax lots 100, 101, 200 and 301 on June 30, 1964; when William Granger and Janet Granger Fish acquired tax lots 100, 101, 200, and 301 on December 9, 1969; and when Scott Granger acquired tax lots 100, 101, 200, and 301 on December 18, 1982.

Claimants William Granger and Janet Granger Fish acquired tax lots 100, 101, 200 and 301 prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property when they acquired them in 1969.

Claimant Scott Granger acquired tax lots 100, 101, 200 and 301 after the adoption of the statewide planning goals, but before the Commission acknowledged Jackson County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged the county's plan and land use regulations when Scott Granger acquired tax lots 100, 101, 200 and 301 on December 18, 1982, the statewide planning goals applied directly to the tax lots when he acquired them.⁹

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, Scott Granger's opportunity to divide tax lots 100, 101, 200 and 301 when he acquired them in 1982 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1)

⁹ 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).

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 December 18, 1982, 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).

In addition to the applicable provisions of Goal 3 and ORS 215 in effect when Scott Granger acquired tax lots 100, 101, 200 and 301 on December 18, 1982, and other laws in effect when he acquired these tax lots, there may be other laws that apply to his use of these tax lots 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 claimants' 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.

No information has been presented in the claim to establish that Scott Granger's desired division of the subject property into one-acre parcels complies with the "commercial" standard for farm parcels under Goal 3 or the standards for non-farm parcels under ORS 215.263 (1981 edition), nor is there any information to establish that his desired development of dwellings on tax lot 100, 101, 200 and 301 satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1981 edition).

Conclusions

Based on the department has determined that the claimants are not entitled to relief as to tax lot 400 under ORS 197.352 as a result of land use regulations enforced by the Commission or the department because the claimants have not established their ownership of the property. Therefore, the department recommends that the claim for tax lot 400 be denied.

The department further recommends that the claim be denied as to Russell Granger and Thomas Fish because they have not established when they acquired the property and thus, the department cannot determine whether or the extent to which any state land use regulations restrict their desired use of the property relative to their acquisition date.

The department further recommends that Janet, William and Scott Granger and Janet Granger Fish's claim be approved as to tax lots 100, 101, 200 and 301, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws apply to Janet, William and Scott Granger and Janet Granger Fish's division of tax lots 100, 101, 200 and 301, consisting of 311.65 acres, into one-acre parcels and to their development a dwelling on each parcel: applicable provisions of Goals 3, 5, 11 and 14, ORS 215 and OAR 660, divisions 16, and 33 enacted or adopted after each claimant acquired the property. These laws will not apply to the claimants only to the extent necessary to allow them to use tax lots 100, 101, 200 and 301 for the use described in this report, and only to the extent that use was

permitted when Janet Granger acquired the property on June 30, 1964; when William Granger and Janet Granger Fish acquired the property on December 9, 1969; and when Scott Granger acquired the property on December 18, 1982.

Goal 11 will not apply only to the extent that it prohibits the *claimants* from establishing an urban level of public facilities and services to serve the development of the property. Goal 11 will continue to apply to public service providers seeking to extend or establish public facilities to serve the subject property.

2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lots 100, 101, 200 and 301 for the use described in this report, subject to the standards in effect on June 30, 1964, as to Janet Granger and subject to the standards in effect on December 9, 1969, as to William Granger and Janet Granger Fish. When claimant Scott Granger acquired the property on December 18, 1982, it was subject to Goals 3, 5, 11 and 14, their implementing rules and 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 tax lots 100, 101, 200 and 301 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 tax lots 100, 101, 200 and 301 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 tax lots 100, 101, 200 and 301, 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 tax lots 100, 101, 200, 301 by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on January 30, 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.