



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

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

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

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

March 16, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130093

Claimants: Robert and Margaret Rosendahl and Douglas Klick

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

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

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. M130093
(BALLOT MEASURE 37) OF)
Robert and Margaret Rosendahl, CLAIMANTS)

Claimants: Robert and Margaret Rosendahl (the Claimants)

Property: Township 36S, Range 6W, Section 10: tax lot 1500
Township 36S, Range 6W, Section 11C: tax lot 300
Josephine County (the Property)

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

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

ORDER

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Robert and Margaret Rosendahl's division of tax lots 300 and 1500 and to Douglas Klick's division of the 41.92-acre subject property into 2.5-acre parcels: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired the subject property. These laws will not apply to the claimants only to the extent necessary to allow Robert and Margaret Rosendahl to use tax lots 300 and 1500 and to allow Douglas Klick to use the subject property for the use described in this report, and only to the extent that use was permitted when Robert and Margaret acquired tax lots 300 and 1500 on February 24, 1976, and when Douglas Klick acquired the property on August 4, 2004. The department acknowledges that the relief to which Douglas Klick is entitled to under ORS 197.352 will not allow him to use 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 to use the property for the use described in this report, subject to the standards in effect when Robert and Margaret Rosendahl acquired tax lots 300 and 1500 on February 24, 1976, and when

Douglas Klick acquired the subject property on August 4, 2004. On February 24, 1976, tax lots 300 and 1500 were subject to applicable provisions of Goal 3 and ORS 215 then in effect. On August 4, 2004, the property was subject to the applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently in effect.

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

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

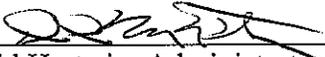
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable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

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

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


Cora R. Parker, Deputy Director
DLCD
Dated this 16th day of March, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 16th day of March, 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. M130093
(BALLOT MEASURE 37) OF)
Robert and Margaret Rosendahl, CLAIMANTS)

Claimants: Robert and Margaret Rosendahl (the Claimants)

Property: Township 36S, Range 6W, Section 11C: tax lot 301
Josephine 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

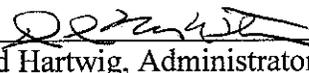
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the 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 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


Cora R. Parker, Deputy Director
DLCD
Dated this 16th day of March, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 16th day of March, 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)

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 C
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M130093
(BALLOT MEASURE 37) OF)	
Douglas Klick, CLAIMANT)	

Claimant: Douglas Klick (the Claimant)

Property: Township 36S, Range 6W, Section 10: tax lot 1500
Township 36S, Range 6W, Section 11C: tax lots 300 and 301
Josephine 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 Robert and Margaret Rosendahl's division of tax lots 300 and 1500 and to Douglas Klick's division of the 41.92-acre subject property into 2.5-acre parcels: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired the subject property. These laws will not apply to the claimants only to the extent necessary to allow Robert and Margaret Rosendahl to use tax lots 300 and 1500 and to allow Douglas Klick to use the subject property for the use described in this report, and only to the extent that use was permitted when Robert and Margaret acquired tax lots 300 and 1500 on February 24, 1976, and when Douglas Klick acquired the property on August 4, 2004. The department acknowledges that the relief to which Douglas Klick is entitled to under ORS 197.352 will not allow him to use 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 to use the property for the use described in this report, subject to the standards in effect when Robert and Margaret Rosendahl acquired tax lots 300 and 1500 on February 24, 1976, and when

Douglas Klick acquired the subject property on August 4, 2004. On February 24, 1976, tax lots 300 and 1500 were subject to applicable provisions of Goal 3 and ORS 215 then in effect. On August 4, 2004, the property was subject to the applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently in effect.

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

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

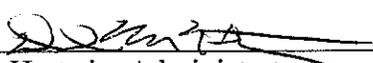
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable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

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

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


Cora R. Parker, Deputy Director
DLCD
Dated this 16th day of March, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
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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

March 16, 2007

STATE CLAIM NUMBER: M130093

NAMES OF CLAIMANTS: Robert and Margaret Rosendahl
Douglas Klick

MAILING ADDRESSES: Robert and Margaret Rosendahl
221 Lathrop Lane
Grants Pass, Oregon 97526

Douglas Klick
3542 Sagamore Drive
Huntington Beach, California 92649

PROPERTY IDENTIFICATION: Township 36S, Range 6W
Section 10: tax lot 1500
Section 11C: tax lots 300 and 301
Josephine County

OTHER CONTACT INFORMATION: Eastwood Homes, LLC
116 NE Steiger Street
Grants Pass, Oregon 97526

DATE RECEIVED BY DAS: September 22, 2006

180-DAY DEADLINE: March 21, 2007

I. SUMMARY OF CLAIM

The claimants, Robert and Margaret Rosendahl and Douglas Klick, seek compensation in the amount of \$2,062,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 41.92-acre subject property¹ into 2.5-acre parcels.² The

¹ The subject property includes three tax lots. Tax lot 300 consists of 26.15 acres; tax lot 301 consists of 2.52 acres; and tax lot 1500 consists of 13.25 acres.

² The claim also indicates that the claimants may 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 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

subject property is located at 221 Lathrop Lane, near Grants Pass, in Josephine 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 Robert and Margaret Rosendahl's division of tax lots 300 and 1500 and Douglas Klick's division of the 41.92-acre subject property into 2.5-acre parcels: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after each claimant acquired the subject property. These laws will not apply to the claimants only to the extent necessary to allow Robert and Margaret Rosendahl to use tax lots 300 and 1500 and to allow Douglas Klick to use the subject property for the use described in this report, and only to the extent that use was permitted when Robert and Margaret acquired tax lots 300 and 1500 on February 24, 1976, and when Douglas Klick acquired the property on August 4, 2004. The department acknowledges that the relief to which Douglas Klick is entitled to under ORS 197.352 will not allow him to use the subject property in the manner set forth in the claim.

The department has further determined that Robert and Margaret Rosendahl's claim is not valid with regard to tax lot 301 because their desired use of tax lot 301 was prohibited under the laws in effect when they acquired it in 1998. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On January 10, 2007, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, four 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.)

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."

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 September 22, 2006, for processing under OAR 125, division 145. The claim identifies “change of zone from SR 2.5 to FR (farm resource)” as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

Claimants Robert and Margaret Rosendahl acquired an interest in the subject property with Herman and Charlotte Klick (Douglas Klick’s family members) on February 24, 1976, as reflected by an agreement included with the claim. On February 12, 1979, Margaret and Robert Rosendahl conveyed all of their interest in tax lot 301 to Herman and Charlotte Klick, as reflected by a bargain and sale deed included with the claim. On August 28, 1998, Herman and Charlotte Klick re-conveyed a one-half interest in tax lot 301 to the Rosendahl Loving Trust, as reflected by a bargain and sale deed included with the claim. On August 28, 1998, claimants Robert and Margaret Rosendahl transferred their interest in tax lots 300 and 1500 to a revocable

trust, the Rosendahl Loving Trust, as reflected by a warranty deed included with the claim.³ Claimant Douglas Klick acquired an interest in the subject property on August 4, 2004, as reflected by section 6.08 of the Declaration of Trust of the Herman August Klick and Charlotte Elizabeth Klick Trust and death certificates for Herman and Charlotte Klick. The Josephine County Assessor's Office confirms Herman August Klick and Charlotte Elizabeth Klick Trust's and the Rosendahl Loving Trust's current ownership of the subject property.

Conclusions

The claimants, Robert and Margaret Rosendahl and Douglas Klick, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C). Robert and Margaret Rosendahl acquired tax lots 300 and 1500 on February 24, 1976, and tax lot 301 on August 26, 1998.⁴ Douglas Klick acquired the subject property on August 4, 2004. Herman and Charlotte Klick are family members of Douglas Klick as that term is defined by ORS 197.352(11)(A) as of February 24, 1976.

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 acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the 41.92-acre subject property into 2.5-acre parcels and that the current zoning prohibits the desired use.

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 FR (farm resource) by Josephine 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 3.⁵ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 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.

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).

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

⁴ Claimant Robert and Margaret Rosendahl have not asserted family ownership for tax lot 301 and have not established a family relationship among the claimants.

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

ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

Claimants Robert and Margaret Rosendahl acquired tax lots 300 and 1500 and the Klick family acquired the subject property after the adoption of the statewide planning goals, but before the Commission acknowledged Josephine 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 Robert and Margaret Rosendahl acquired tax lots 300 and 1500 on February 24, 1976, and when the Klick family acquired the subject property on February 24, 1976, the statewide planning goals, and Goal 3 in particular, applied directly to the subject property when Robert and Margaret Rosendahl acquired tax lots 300 and 1500 and when the Klick family acquired the subject property.⁶

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, Robert and Margaret Rosendahl's opportunity to divide tax lots 300 and 1500 when they acquired these tax lots in 1976 and the Klick Family's opportunity to divide the subject property when they acquired it in 1976 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.

No information has been presented in the claim to establish that the claimants' desired division of the subject property into 2.5-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).

When Robert and Margaret Rosendahl acquired tax lot 301 on August 26, 1998, the property was subject to the state land use regulations currently in effect, as described above.

Conclusions

The current zoning requirements and minimum lot size standards established by Goal 3, ORS 215 and OAR 660, division 33, do not allow the claimants' desired division of the subject property. However, the claim does not establish whether or the extent to which the claimants'

⁶ 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).

desired use of the subject property complies with the standards for land divisions under the requirements of Goal 3 and ORS 215 in effect when Robert and Margaret Rosendahl acquired tax lots 300 and 1500 and when the Klick Family acquired the subject property on February 24, 1976. Laws enacted or adopted since Robert and Margaret Rosendahl acquired tax lot 301 in 1998 do not restrict the claimants' desired use of this tax lot relative to when Robert and Margaret Rosendahl acquired it in 1998.

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 \$2,062,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on a 2004 appraisal report included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are Robert and Margaret Rosendahl who acquired tax lots 300 and 1500 on February 24, 1976, and tax lot 301 on August 28, 1998, and Douglas Klick, whose family who acquired the subject property on February 24, 1976. No state laws enacted or adopted since Robert and Margaret Rosendahl acquired tax lot 301 restrict the use of the property relative to the uses allowed in 1998 and therefore, the fair market value tax lot 301 has not been reduced as a result of land use regulations enforced by the Commission or the department since Robert and Margaret Rosendahl acquired the tax lot. Under ORS 197.352, the claimants are otherwise due compensation for land use regulations that restrict the use of the remainder 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 Robert and Margaret Rosendahl acquired tax lots 300 and 1500 and since the Klick 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 \$2,062,000.

Without additional evidence and documentation establishing that the laws identified in Section V.(2) have the effect of reducing the subject property's fair market value, and without verification of whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when they acquired the property, it is not possible to

substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

4. Exemptions Under ORS 197.352(3)

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

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Josephine County has implemented through its current FR zone. With the exception of provisions of Goal 3 and ORS 215 in effect when Robert and Margaret Rosendahl acquired tax lots 300 and 1500 and when the Klick family acquired the subject property on February 24, 1976, these land use regulations were enacted or adopted after Robert and Margaret Rosendahl and the Klick family acquired the property. All of these regulations were in effect when Robert and Margaret Rosendahl acquired tax lot 301.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that with the exception of provisions of Goal 3 and ORS 215 in effect in 1976, the statutory, goal and rule restrictions on division of the subject property were not in effect when the Klick family acquired it and when Robert and Margaret Rosendahl acquired tax lots 300 and 1500, and therefore, these laws are not exempt under ORS 197.352(3)(E). Provisions of Goal 3 and ORS 215 in effect when Robert and Margaret Rosendahl acquired tax lots 300 and 1500 and when the Klick family acquired the subject property in 1976 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

All of the state land use regulations that restrict Robert and Margaret Rosendahl's desired use of tax lot 301 were in effect when they acquired this tax lot. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimants or their family acquired the subject property.

Other laws in effect when Robert and Margaret Rosendahl acquired tax lots 300 and 1500 and when the Klick family acquired the subject property are also exempt under ORS 197.352(3)(E) and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to Robert and Margaret Rosendahl's use of tax lots 300 and 1500 and Douglas Klick'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 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).

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department do not restrict Robert and Margaret Rosendahl's desired use of tax lot 301 relative to uses permitted when they acquired the tax lot in 1998. The department has further determined laws enforced by the Commission or the department restrict Robert and Margaret Rosendahl's desired use of tax lots 300 and 1500 and restrict Douglas Klick'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 \$2,062,000. However, without additional relevant evidence and documentation 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 Robert and Margaret Rosendahl's desired use of tax lots 300 and 1500 and Douglas Klick's desired use of the subject property was allowed under the standards in effect when Robert and Margaret Rosendahl acquired tax lots 300 and 1500 and when the Klick family acquired the subject 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 Robert and Margaret Rosendahl to use tax lots 300 and 1500 for a use permitted at the time they acquired these tax lots on February 24, 1976, and to allow Douglas Klick to use the subject property for a use permitted at the time he acquired the property on August 4, 2004.

At the time Douglas Klick acquired an interest in the subject property, it was zoned EFU by Josephine 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.

In addition to the provisions of Goal 3, ORS 215 and OAR 660, division 33, in effect when Douglas Klick acquired the property, there may be other laws that continue to apply to the claimants' use of the property that have not been identified in the claim. 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 and foregoing findings and conclusions, Robert and Margaret Rosendahl are not entitled to relief for tax lot 301 because no state land use regulations enforced by the Commission or the department restrict their use of the tax lot relative to uses permitted when they acquired it in 1998. Therefore, the department recommends that Robert and Margaret Rosendahl's claim, as it applies to tax lot 301, be denied.

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Robert and Margaret Rosendahl's division of tax lots 300 and 1500 and to Douglas Klick's division of the 41.92-acre subject property into 2.5-acre parcels: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired the subject property. These laws will not apply to the claimants only to the extent necessary to allow Robert and Margaret Rosendahl to use tax lots 300 and 1500 and to allow Douglas Klick to use the subject property for the use described in this report, and only to the extent that use was permitted when Robert and Margaret acquired tax lots 300 and 1500 on February 24, 1976, and when Douglas Klick acquired the property on August 4, 2004. The department acknowledges that the relief to which Douglas Klick is entitled to under ORS 197.352 will not allow him to use 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 to use the property for the use described in this report, subject to the standards in effect when Robert and Margaret Rosendahl acquired tax lots 300 and 1500 on February 24, 1976, and when Douglas Klick acquired the subject property on August 4, 2004. On February 24, 1976, tax lots 300 and 1500 were subject to applicable provisions of Goal 3 and ORS 215 then in effect. On August 4, 2004, the property was subject to the applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently 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 February 23, 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.