



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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March 30, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130227

Claimants: Everett M. and Helen M. Grife

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. M130227
 (BALLOT MEASURE 37) OF)
 Everett M. Grife, CLAIMANT)

Claimant: Everett M. Grife (the Claimant)

Property: Township 18S, Range 4W, Section 34, Tax lots 301, 400, 500 and 600
 Lane 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 Everett and Helen Grife's division of tax lots 301, 400 and 500 and to Everett Grife's division of tax lot 600 into five-acre parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 4 and 14, ORS 215 and OAR 660-004-0040 and 660, division 6, enacted or adopted after each claimant acquired the subject property.

These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Everett Grife acquired the subject property, as follows:

Tax Lot(s):	Acquisition Date:
400	August 1, 1951
500	October 15, 1954
600	April 30, 1972
301	November 25, 1991

The same land use regulations will not apply to Helen Grife only to the extent that use was permitted when she acquired the identified tax lots, as follows:

Tax Lot(s):	Acquisition Date:
400 and 500	February 2, 1962
301	December 14, 1994

The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow Helen Grife and may not allow Everett Grife to use tax lot 301 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 subject tax lots for the use described in this report, subject to the standards in effect when Everett Grife acquired the subject property and when Helen Grife acquired tax lots 301, 400 and 500 as identified above. In 1991, tax lot 301 was subject to compliance with Goal 4 and OAR 660, division 6, as implemented through Lane County's acknowledged forest zone. In December 1994, tax lot 301 was subject to the provisions of Goal 4, ORS 215 and OAR 660, division 6, 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 Manager for the Measure 37 Services Division of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

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


Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 30th day of March, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 30th 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. M130227
(BALLOT MEASURE 37) OF)	
Helen M. Grife, CLAIMANT)	

Claimant: Helen M. Grife (the Claimant)

Property: Township 18S, Range 4W, Section 34, Tax lots 301, 400, 500
Lane 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 Everett and Helen Grife's division of tax lots 301, 400 and 500 and to Everett Grife's division of tax lot 600 into five-acre parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 4 and 14, ORS 215 and OAR 660-004-0040 and 660, division 6, enacted or adopted after each claimant acquired the subject property.

These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Everett Grife acquired the subject property, as follows:

Tax Lot(s):	Acquisition Date:
400	August 1, 1951
500	October 15, 1954
600	April 30, 1972
301	November 25, 1991

The same land use regulations will not apply to Helen Grife only to the extent that use was permitted when she acquired the identified tax lots, as follows:

Tax Lot(s):	Acquisition Date:
400 and 500	February 2, 1962
301	December 14, 1994

The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow Helen Grife and may not allow Everett Grife to use tax lot 301 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 subject tax lots for the use described in this report, subject to the standards in effect when Everett Grife acquired the subject property and when Helen Grife acquired tax lots 301, 400 and 500 as identified above. In 1991, tax lot 301 was subject to compliance with Goal 4 and OAR 660, division 6, as implemented through Lane County's acknowledged forest zone. In December 1994, tax lot 301 was subject to the provisions of Goal 4, ORS 215 and OAR 660, division 6, 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).

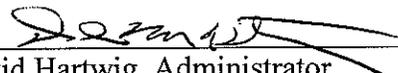
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable 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 Manager for the Measure 37 Services Division of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

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


Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 30th day of March, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 30th day of March, 2007.

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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."

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. M130227
(BALLOT MEASURE 37) OF)
Helen M. Grife, CLAIMANT)

Claimant: Helen M. Grife (the Claimant)

Property: Township 18S, Range 4W, Section 34, Tax lot 600, Lane County
(the property)

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

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

ORDER

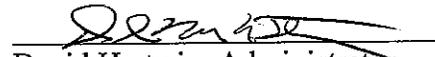
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Manager for the Measure 37 Services Division of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 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


Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 30th day of March, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 30th day of March, 2007.

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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)

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

March 30, 2007

STATE CLAIM NUMBER: M130227

NAMES OF CLAIMANTS: Everett M. Grife
Helen M. Grife

MAILING ADDRESS: 3001 LeBleu Road
Eugene, Oregon 97405

PROPERTY IDENTIFICATION: Township 18S, Range 4W, Section 34
Tax lots 301, 400, 500 and 600
Lane County

OTHER CONTACT INFORMATION: Larry and Connie Hedberg
PO Box 1147
Eugene, Oregon 97440

DATE RECEIVED BY DAS: October 6, 2006

180-DAY DEADLINE: April 4, 2007

I. SUMMARY OF CLAIM

The claimants, Everett and Helen Grife, seek compensation in the amount of \$7,325,996 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 146.82-acre subject property into five-acre parcels and to develop a dwelling on each parcel.¹ The subject property is located at 3001 LeBleu Road, near Eugene, in Lane County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid 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 Everett and Helen Grife's division of tax lots 301, 400 and 500 and Everett Grife's division of tax lot 600 into five-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 4 (Forest Lands) and 14

¹ The subject property includes four tax lots. Tax lot 301 consists of 0.57 acre; tax lot 400 consists of 80 acres; tax lot 500 consists of 64.85 acres; and tax lot 600 consists of 1.4 acres.

(Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660-004-0040 and 660, division 6, enacted or adopted after each claimant acquired the subject tax lots. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject tax lots for the use described in this report, and only to the extent that use was permitted when Everett Grife acquired the subject property, as follows:

Tax Lot(s):	Acquisition Date:
400	August 1, 1951
500	October 15, 1954
600	April 30, 1972
301	November 25, 1991

The same land use regulations will not apply to Helen Grife only to the extent that use was permitted when she acquired the identified tax lots, as follows:

Tax Lot(s):	Acquisition Date:
400 and 500	February 2, 1962
301	December 14, 1994

The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow Helen Grife and may not allow Everett Grife to use tax lot 301 in the manner set forth in the claim.

The department has further determined that Helen Grife's claim is not valid as to tax lot 600 because the claimants have not established her ownership of the tax lot. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On February 7, 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, two 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 property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letters in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

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

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on October 6, 2006, for processing under OAR 125, division 145. The claim identifies Lane County's zoning ordinances as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

Claimant Everett Grife acquired tax lot 400 on August 1, 1951, and acquired tax lot 500 on October 15, 1954, as reflected by warranty deeds included with the claim. Claimant Helen Grife acquired tax lots 400 and 500 from her husband, Everett Grife, on February 2, 1962, as reflected by a warranty deed included with the claim. On April 30, 1972, Everett Grife acquired tax lot 600 from his family member, Henry M. Grife, as reflected by probate documents and a quitclaim deed included with the claim. Henry Grife acquired tax lot 600 on April 21, 1949, as reflected by a warranty deed included with the claim. Everett Grife acquired tax lot 301 on November 25, 1991, as reflected by a bargain and sale deed included with the claim. On December 14, 1994,

the claimants transferred tax lots 301, 400 and 500 to the Everett M. Grife and Helen M. Grife Revocable Trust, as reflected by a warranty deed included with the claim.²

The Lane County Assessor's Office confirms Everett Grife's current ownership of the subject property and confirms Helen Grife's current ownership of tax lots 301, 400 and 500. The claim does not establish when Helen Grife acquired tax lot 600 and does not include copies of any deeds or otherwise establish that she is an owner of this tax lot.

Conclusions

Claimant Everett Grife is an "owner" of the subject property, and claimant Helen Grife is an "owner" of tax lots 400, 500 and 301, as that term is defined by ORS 197.352(11)(C). Everett Grife has been an owner of tax lot 400 since August 1, 1951; tax lot 500 since October 15, 1954; tax lot 600 since April 30, 1972; and tax lot 301 since November 25, 1991. Helen Grife has been an owner of tax lots 400 and 500 since February 2, 1962, and tax lot 301 since December 14, 1994. Claimant Helen Grife has not established that she is an "owner" of tax lot 600 as that term is defined in ORS 197.352(11)(C). Henry Grife is a "family member" of Everett Grife as that term is defined by ORS 197.352(11)(A) and acquired tax lot 600 on April 21, 1949. Everett Grife is a "family member" of Helen Grife, as that term is defined by ORS 2197.352(11)(A).

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants' use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the 146.82-acre subject property into five-acre parcels and to develop a dwelling on each parcel, and that the current zoning prohibits the desired use.

The claim is based generally on the applicable provisions of state law that require forest zoning and rural residential zoning and restrict uses on forest- and rural residential-zoned lands.

Tax lots 301, 400 and 500 are zoned Impacted Forest (F2) by Lane County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because these tax lots are "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

² Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

Everett Grife acquired tax lot 400 in 1951 and tax lot 500 in 1954, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to tax lots 400 and 500 in 1951 and 1954.

Everett Grife acquired tax lot 301 in 1991. At that time, the property was zoned F2 and subject to Lane County's acknowledged forest zone.³ When Everett Grife acquired tax lot 301, the desired division and development of the property would have been governed by the applicable provisions of Goal 4 and OAR 660, division 6, as implemented through the county's acknowledged forest zone.⁴

Tax lot 600 is zoned Rural Residential (RR5) by Lane County. The RR5 zone is consistent with Goal 14, which generally requires that land outside of urban growth boundaries be used for rural uses. Lane County's RR5 zone was adopted on February 29, 1984, and requires a minimum of five acres for the creation of a new lot or parcel.

Goal 14 was effective on January 25, 1975, and requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and efficient transition from rural to urban land use. In 2000, as a result of a 1986 Oregon Supreme Court decision,⁵ the Commission amended Goal 14 and adopted OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas), which was effective on October 4, 2000.

The rule states that if a county rural residential zone in effect on October 4, 2000, specifies a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size that is already in effect (OAR 660-004-0040(7)(c)). Some relief from this provision is available for lots or parcels having more than one permanent habitable dwelling pursuant to OAR 660-004-0040(7)(h). The rule also provides that a county's minimum lot size requirement in a rural residential zone shall not be amended to allow a smaller minimum lot size without approval of an exception to Goal 14 (OAR 660-004-0040(6)). Because Lane County's rural residential zone was in effect on October 4, 2000, and requires a minimum lot size of five acres, the minimum lot size for any new lot or parcel must equal or exceed five acres.

Everett Grife's family member acquired tax lot 600 in 1949 and Everett Grife acquired tax lot 600 in 1972, prior to the adoption of the statewide planning goals and their implementing statutes and rules. No county zoning applied to tax lot 600 in 1949 and 1972.

³ Lane County's forest zone was acknowledged by the Commission for compliance with Goal 4 on October 3, 1984.

⁴ After the county's comprehensive plan and land use regulations were acknowledged by the Commission as complying with the statewide planning goals, the goals and implementing rules no longer applied directly to individual local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, insofar as the state and local provisions implement the requirements of the goals and rules, 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).

⁵ *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 4 and 14, ORS 215 and OAR 660-004-0040 and 660, division 6, were enacted or adopted after Everett Grife and his family acquired tax lot 600 and after Everett Grife acquired tax lots 301, 400 and 500. These laws restrict the use of the subject tax lots relative to the uses allowed when Everett Grife and his family acquired tax lot 600 and after Everett Grife acquired tax lots 301, 400 and 500. However, the claim does not establish whether or to what extent the claimants' desired use of tax lot 301 complies with the standards for land divisions and development in Lane County's acknowledged forest zone and comprehensive plan in effect when Everett Grife acquired tax lot 301 on November 25, 1991.

As explained in Section V.(1) above, Helen Grife has not established that she is an "owner" of tax lot 600 as that term is defined in ORS 197.352(11)(C). Without such demonstration, it is not possible to determine that any laws enforced by the Commission or the department restrict her use of tax lot 600 in a manner that reduces the fair market value.

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 \$7,325,996 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 real estate professional's assessment of the subject property's value and review of similar properties in Lane County.

Conclusions

As explained in Section V.(1) of this report, the claimants are Everett Grife whose family member acquired tax lot 600 in 1949 and who acquired tax lot 400 in 1951, tax lot 500 in 1954, tax lot 600 in 1972 and tax lot 301 in 1991 and his wife, Helen Grife. As explained in Section V.(1) of this report, Helen Grife has not established her ownership of the tax lot 600. Without such demonstration, the department can make no determination on the effect of any land use regulations on the fair market value of tax lot 600 for Helen Grife.

Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since Everett Grife and his family acquired tax lot 600 and after Everett Grife acquired tax lots 301, 400 and 500 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 \$7,325,996.

Without an appraisal or other documentation, and without verification of whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when the claimants acquired the property, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the Everett Grife and his family acquired the subject property.

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 Goals 4 and 14, ORS 215 and OAR 660-004-0040 and 660, division 6, which Lane County has implemented through its current F2 and RR5 zones. With the exception of Goal 4 and OAR 660, division 6, in effect when Everett Grife acquired tax lot 301, these land use regulations were enacted or adopted after Everett Grife's family acquired tax lot 600 and after Everett Grife acquired tax lots 301, 400 and 500.

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. With the exception of Goal 4 and OAR 660, division 6, in effect when Everett Grife acquired tax lot 301 in 1991, it appears that the general statutory, goal and rule restrictions on residential division and development of the subject property were not in effect when Everett Grife and his family acquired tax lot 600 in 1949 and 1972, and when Everett Grife acquired tax lot 400 in 1951 and tax lot 500 in 1954. As a result, these laws are not exempt under ORS 197.352. Laws in effect when Everett Grife acquired tax lot 301 are exempt under ORS 197.352(3)(E) 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, Helen Grife has not established that she is an "owner" of tax lot 600 as that term is defined in ORS 197.352(11)(C). Without such demonstration, the department can make no determination as to whether any land use laws are exempt from ORS 197.352 with regard to Helen Grife.

VI. FORM OF RELIEF

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

Findings of Fact

Based on the record, the department finds that Helen Grife's claim is not valid as to tax lot 600, because the claimants have not demonstrated her ownership of the tax lot. The department otherwise determines laws enforced by the Commission or the department restrict the claimants' desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$7,325,996. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when the claimants or the claimants' family 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 Everett Grife to use the subject property for a use permitted at the time he acquired tax lot 400 on August 1, 1951; tax lot 500 on October 15, 1954; tax lot 600 on April 30, 1972; and tax lot 301 on November 25, 1991; and to allow Helen Grife to use tax lots 301, 400 and 500 at the time she acquired tax lots 400 and 500 on February 2, 1962, and tax lot 301 on December 14, 1994.

Claimant Helen Grife acquired tax lots 400 and 500 prior to the adoption of the statewide planning goals and their implementing statutes and rules. However, when Helen Grife acquired tax lot 301 on December 14, 1994, that property was subject to the current laws in effect, as described in Section V.(2) of the report. The department acknowledges that the claimants' desired use of tax lot 301 was prohibited under the laws in effect when Helen Grife acquired it.

In addition to the applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, in effect when Helen Grife acquired tax lot 301, and other laws in effect when either of the claimants acquired the subject property, there may be other laws that apply to the claimants' use of the property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may

become evident that other state laws apply to that use, and depending on when they were enacted or adopted, may continue to apply to the claimants' property. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D) and will continue to apply to the subject property on that basis.

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

Conclusions

Based on the record before the department, for tax lot 600, Helen Grife has not established that she is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because the claimants have not established her ownership of the tax lot. Therefore, the department recommends that Helen Grife's claim be denied as to tax lot 600. 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 Everett and Helen Grife's division of tax lots 301, 400 and 500 and to Everett Grife's division of tax lot 600 into five-acre parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 4 and 14, ORS 215 and OAR 660-004-0040 and 660, division 6, enacted or adopted after each claimant acquired the subject property.

These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Everett Grife acquired the subject property, as follows:

Tax Lot(s):	Acquisition Date:
400	August 1, 1951
500	October 15, 1954
600	April 30, 1972
301	November 25, 1991

The same land use regulations will not apply to Helen Grife only to the extent that use was permitted when she acquired the identified tax lots, as follows:

Tax Lot(s):	Acquisition Date:
400 and 500	February 2, 1962
301	December 14, 1994

The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow Helen Grife and may not allow Everett Grife to use tax lot 301 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 subject tax lots for the use described in this report, subject to the standards in effect when Everett Grife acquired the subject property and when Helen Grife acquired tax lots 301, 400 and 500 as identified above. In 1991, tax lot 301 was subject to compliance with Goal 4 and OAR 660, division 6, as implemented through Lane County's acknowledged forest zone. In December 1994, tax lot 301 was subject to the provisions of Goal 4, ORS 215 and OAR 660, division 6, 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 March 9, 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.