



Oregon

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April 23, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130485

Claimants: Edward and Helen Pritchett

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)
 COMPENSATION UNDER ORS 197.352) FINAL ORDER
 (BALLOT MEASURE 37) OF) CLAIM NO. M130485
 Edward and Helen Pritchett, CLAIMANTS)

Claimants: Edward and Helen Pritchett (the Claimants)

Property: Township 4S, Range 5W, Section 35: tax lot 1600, Section 36: tax lot 200
 Township 5S, 5W, Section 2, Tax lots 200 and 500
 Yamhill 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 Helen Pritchett's division of tax lots 200 (section 2), 200 (section 36) and 500 into six parcels, to her development of a dwelling on each parcel and to her development of a dwelling on tax lot 1600: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each of the claimants acquired each of the subject tax lots, as follows:

Claimant:	Helen Pritchett			
Tax Lot:	200 (section 2)	200 (section 36)	500	1600
Acquisition Date:	September 12, 1974	May 23, 1985	September 23, 1975	May 23, 1985

Claimant:	Edward Pritchett			
Tax Lot:	200 (section 2)	200 (section 36)	500	1600
Acquisition Date:	September 12, 1974	June 26, 1985	December 10, 1975	June 26, 1985

These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted at the time they each acquired each of the tax lots that comprises the subject property, as described above.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on September 12, 1974, for tax lot 200 (section 2); September 23 and December 10, 1975, for tax lot 500; and May 23 and June 26, 1985, for tax lots 200 (section 36) and 1600. On September 12, 1974, tax lot 200 (section 2) was subject to applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition). On September 23 and December 10, 1975, tax lot 500 was subject to applicable provisions of Goal 3 and ORS 215 then in effect. On May 23 and June 26, 1985, tax lots 200 (section 36) and 1600 were subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 5, then in effect.

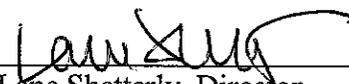
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants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

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

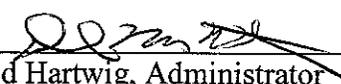
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable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

This Order is entered by the 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 23rd day of April, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 23rd day of April, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

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

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that “[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost.”

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation**

April 23, 2007

STATE CLAIM NUMBER: M130485

NAMES OF CLAIMANTS: Edward and Helen Pritchett

MAILING ADDRESS: 13550 SW Masonville Road
McMinnville, Oregon 97128

PROPERTY IDENTIFICATION: Township 4S, Range 5W
Section 35: tax lot 1600
Section 36: tax lot 200

Township 5S, 5W, Section 2
Tax lots 200 and 500
Yamhill County

DATE RECEIVED BY DAS: October 30, 2006

180-DAY DEADLINE: April 28, 2007

I. SUMMARY OF CLAIM

The claimants, Edward and Helen Pritchett, seek compensation in the amount of \$200,000 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 tax lots 200 (section 2), 200 (section 36) and 500 into six parcels, to develop a dwelling on each parcel and to develop a dwelling on tax lot 1600.¹ The subject property is located on McCabe Chapel Road and Masonville Road, in Yamhill County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Edward and Helen Pritchett's division of tax lots 200 (section 2), 200 (section 36) and 500 into six parcels, to their development of a dwelling on each parcel and to their

¹ The subject property is 205.99 acres and includes four tax lots. Tax lot 1600 consists of 25 acres, tax lot 200 (section 36) consists of 67.79 acres, tax lot 200 (section 2) consists of 63.3 acres and tax lot 500 consists of 49.9 acres.

development of a dwelling on tax lot 1600: applicable provisions of Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after each of the claimants acquired each of the subject tax lots, as follows:

Claimant:	Helen Pritchett			
Tax Lot:	200 (section 2)	200 (section 36)	500	1600
Acquisition Date:	September 12, 1974	May 23, 1985	September 23, 1975	May 23, 1985

Claimant:	Edward Pritchett			
Tax Lot:	200 (section 2)	200 (section 36)	500	1600
Acquisition Date:	September 12, 1974	June 26, 1985	December 10, 1975	June 26, 1985

These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted at the time they each acquired each of the tax lots that comprises the subject property, as described above. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

OAR 125-145-0100 provides an opportunity for the claimants or the claimants' authorized agent and any third parties to submit written comments, evidence and information in response to the draft staff report and recommendation. According to DAS, no written comments were received in response to the 10-day notice.

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 30, 2006, for processing under OAR 125, division 145. The claim identifies Yamhill County's "EFU-80" zone as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

The claimants, Edward and Helen Pritchett, acquired each of the tax lots that comprises the subject property as follows:

Date:	Party:	Documents Included With the Claim:	Tax Lot:	Family Ownership:	Date of Family Ownership:
September 12, 1974	Edward and Helen Pritchett	Warranty Deed	200 (section 2)	Margaret Handley, Mother	September 18, 1934, indenture
September 23, 1975	Helen Pritchett	Probate court decree of final distribution	500	Margaret Handley, Mother	September 18, 1934, indenture
December 10, 1975	Edward Pritchett	Deed creating estate by the entirety			
May 23, 1985	Helen Pritchett	Decree of final distribution in the Estate of Ernest J. Handley	200 (section 36) and 1600	Ernest and Margaret Handley, Parents	June 8, 1951, Warranty Deed, (tax lot 200 (section 36)) August 27, 1964, Warranty Deed (tax lot 1600)
June 26, 1985	Edward Pritchett	Deed creating estate by the entirety			

On May 24, 1996, the claimants transferred the property to two trusts, the Edward L. Pritchett Revocable Living Trust and the Helen A. Pritchett Revocable Living Trust, as reflected by a deed included with the claim.² The Yamhill County Assessor's Office confirms the claimants' current ownership of the subject property.

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

Conclusions

The claimants, Edward and Helen Pritchett, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). Edward and Helen Pritchett have been owners of tax lot 200 (section 2) since September 12, 1974. Helen Pritchett has been an owner of tax lot 500 since September 23, 1975, and tax lots 200 (section 36) and 1600 since May 23, 1985. Edward Pritchett has been an owner of tax lot 500 since December 10, 1975, and tax lots 200 (section 36) and 1600 since June 26, 1985. Helen Pritchett’s parents are “family members” as defined by ORS 197.352(11)(A). Helen Pritchett’s mother acquired tax lots 200 (section 2) and 500 on September 18, 1934; and her parents acquired tax lot 200 (section 36) on June 8, 1951, and tax lot 1600 on August 27, 1964.

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 tax lots 200 (section 2), 200 (section 36) and 500 into six parcels to develop a dwelling on each parcel and to develop a dwelling on tax lot 1600. The claim indicates 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 EFU by Yamhill 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 3.³ 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 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

³ The claimants’ property is “agricultural land” because it contains National Resources Conservation Service Class I-IV soils.

August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

The claimants' family first acquired tax lots 200 (section 2) and 500 in 1934, tax lot 200 (section 36) in 1951 and tax lot 1600 in 1964, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1934, 1951 and 1964.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimants' family acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when the claimants' family acquired the property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulations (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

Findings of Fact

The claim includes an estimate of \$200,000 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 the claimants' assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Edward and Helen Pritchett whose family members acquired tax lots 200 (section 2) and 500 in 1934, tax lot 200 (section 36) in 1951 and tax lot 1600 in 1964. 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 the claimants' family acquired the subject property restrict the claimants' desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$200,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the claimants' family acquired the 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 Goal 3, ORS 215 and OAR 660, division 33, which Yamhill County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after the claimants' family acquired the subject property.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimants' family acquired tax lots 200 (section 2) and 500 on September 18, 1934, tax lot 200 (section 36) on June 8, 1951, and tax lot 1600 on August 27, 1964. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimants' family acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced 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 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 \$200,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when the claimants' family acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow: Edward and Helen Pritchett to use tax lot 200 (section 2) for a use permitted at the time they acquired it on September 12, 1974; Helen Pritchett to use tax lot 500 for a use permitted at the time she acquired it on September 23, 1975, and Edward Pritchett to use tax lot 500 for a use permitted at the time he acquired it on December 10, 1975; and Helen Pritchett to use tax lots 200 (section 36) and 1600 for a use permitted at the time she acquired them on May 23, 1985, and Edward Pritchett to use tax lots 200 (section 36) and 1600 for a use permitted at the time he acquired them on June 26, 1985.

The claimants acquired tax lot 200 (section 2) on September 12, 1974, after the adoption of Senate Bill 100 (Chapter 80, Oregon Laws 1973) effective on October 5, 1973, but before the adoption of the statewide planning goals, effective on January 25, 1975. At that time, tax lot 200 (section 2) was not zoned by Yamhill County.

During the period between October 5, 1973, and January 25, 1975, ORS 197.175(1) and 197.280 (1973 editions) required, in addition to any local plan or zoning provisions, that cities and counties exercise their planning responsibilities in accordance with the interim land use planning goals set forth in ORS 215.515 (1973 edition). *Petersen v. Klamath Falls*, 279 Or 249 (1977); *see also, Meeker v. Board of Comm'rs*, 287 Or 665 (1979) (review of a subdivision is an exercise of planning responsibilities requiring application of the goals); *State Housing Council v. Lake Oswego*, 48 Or App. 525 (1981) (noting that while "[I]and use planning responsibility is not defined in ORS ch 197, the Supreme Court has interpreted that term as including annexation approvals, *subdivision approvals* [emphasis added] and partition approvals") citing *Petersen*, *Meeker* and *Alexanderson v. Polk County*, 285 Or 427 (1980). The claimants' desired use includes subdivision of their land. If the claimants had sought to create that use in 1974, as a matter of law, the use would have been subject to the interim planning goals at ORS 215.515.⁴ The following interim goals are directly applicable to this claim: "To preserve the quality of the air, water and *land* [emphasis added] resources of the state"; "To conserve prime farm lands for the production of crops"; "To provide for the orderly and efficient transition from rural to urban land use"; "To protect life and property in areas subject to floods, landslides and other natural disasters"; "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation"; and "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." ORS 215.515 (1973 edition).

⁴ The "interim" land use goals are set forth in ORS 215.515(1)(a) to (j) (1973 edition) as follows: (a) "To preserve the quality of the air, water and land resources of the state," (b) "To conserve open space and protect natural and scenic resources," (c) "To provide for the recreational needs of citizens of the state and visitors," (d) "To conserve prime farm lands for the production of crops," (e) "To provide for the orderly and efficient transition from rural to urban land use," (f) "To protect life and property in areas subject to floods, landslides and other natural disasters," (g) "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation," (h) "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development," (i) "To diversify and improve the economy of the state" and (j) "To ensure that the development of properties within the state is commensurate with the character and the physical limitations of the land." ORS 215.515 (1973 edition).

One of the interim goals was to “conserve prime farm lands for the production of crops.” Soil types are a determinant of prime farm land. Of the soils on 63.31-acre tax lot 200 (section 2), 17.6 percent (11.2 acres) are rated as “prime farmland if drained” by the Natural Resource Conservation Service (NRCS).⁵

No information has been provided establishing whether or to what extent the claimants’ desired division of tax lot 200 (section 2) for residential development complies with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time the claimants acquired tax lot 200 (section 2) on September 12, 1974. In particular, it is unclear whether division and development of the prime farm land portion of the property could satisfy the interim goal requirement to “conserve prime farm lands for the production of crops.”

The claimants acquired tax lot 500 after the adoption of the statewide planning goals, but before the Commission acknowledged Yamhill County’s land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.⁶ Because the Commission had not acknowledged the county’s plan and land use regulations when Helen Pritchett acquired tax lot 500 on September 23, 1975, and when Edward Pritchett acquired tax lot 500 on December 10, 1975, the statewide planning goals, and Goal 3 in particular, applied directly to the claimants’ property when they each acquired it.⁷

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is “appropriate for the continuation of the existing commercial agricultural enterprise within the area.” Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the claimants’ opportunity to divide tax lot 500 when they each acquired it in 1975 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.

Under the Goal 3 standards in effect on September 23, 1975 and December 10, 1975, farm dwellings were allowed if they were determined to be “customarily provided in conjunction with

⁵ NRCS soil survey for Yamhill County.

⁶ Yamhill County’s comprehensive plan and land use regulations were acknowledged by the Commission for compliance with Goal 3 on June 12, 1980.

⁷ The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission’s acknowledgment of each county’s comprehensive plan and implementing regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev. den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county’s plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer applied directly to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

farm use” under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition).

No information has been presented in the claim to establish that the claimants’ desired division of tax lot 500 into two parcels complies with the standards under Goal 3 and ORS 215.263 (1973 edition), nor is there any information to establish that the claimants’ desired development of two dwellings on tax lot 500 satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1973 edition).

At the time the claimants acquired tax lots 200 (section 36) and 1600, it was subject to Yamhill County’s acknowledged EFU zone.⁸ When Helen Pritchett acquired tax lots 200 (section 36) and 1600 on May 23, 1985, and when Edward Pritchett acquired tax lots 200 (section 36) and 1600 on June 26, 1985, the claimants’ desired use of the property would have been governed by the county’s acknowledged EFU zone and the applicable provisions of ORS 215 then in effect.⁹ At that time, tax lots 200 (section 36) and 1600 were zoned by Yamhill County as EF-40, which established a 40-acre minimum lot size and permitted dwellings as an outright use. In 1985, ORS 215.263 (1983 edition) required that divisions of land in EFU zones be “appropriate for the continuation of the existing commercial agricultural enterprise within the area” or not smaller than the minimum size in the county’s acknowledged plan. ORS 215.283(1)(f) (1983 edition) generally allowed farm dwellings “customarily provided in conjunction with farm use.” Non-farm dwellings were allowed under ORS 215.283(3) if they were determined to be compatible with farm use, not interfere seriously with accepted farm practices, not materially alter the stability of the land use pattern in the area and be situated on generally unsuitable land for the production of farm crops and livestock.

The claim does not establish whether or to what extent the claimants’ desired division and development of tax lots 200 (section 36) and 1600 were allowed under the standards in effect when Helen Pritchett acquired tax lots 200 (section 36) and 1600 on May 23, 1985, and when Edward Pritchett acquired tax lots 200 (section 36) and 1600 on June 26, 1985.

In addition to the applicable provisions of ORS 215 in effect, including the interim planning goals set forth in ORS 215.515 (1973) when Edward and Helen Pritchett acquired tax lot 200 (section 2) on September 12, 1974; applicable provisions of Goal 3 and ORS 215 in effect when Helen Pritchett acquired tax lot 500 on September 23, 1975, and when Edward Pritchett acquired tax lot 500 on December 10, 1975; and applicable provisions of Goal 3, ORS 215 and OAR 660 when Helen Pritchett acquired tax lots 200 (section 36) and 1600 on May 23, 1985, and when Edward Pritchett acquired tax lots 200 (section 36) and 1600 on June 26, 1985, 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

⁸ Yamhill County’s EFU zone was acknowledged by the Commission for compliance with Goal 3 on June 12, 1980.

⁹ After the county’s comprehensive plan and land use regulations were acknowledged by the Commission as complying with the statewide planning goals, the goals and implementing rules no longer applied directly to individual local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Helen Pritchett's division of tax lots 200 (section 2), 200 (section 36) and 500 into six parcels, to her development of a dwelling on each parcel and to her development of a dwelling on tax lot 1600: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each of the claimants acquired each of the subject tax lots, as follows:

Claimant:	Helen Pritchett			
Tax Lot:	200 (section 2)	200 (section 36)	500	1600
Acquisition Date:	September 12, 1974	May 23, 1985	September 23, 1975	May 23, 1985

Claimant:	Edward Pritchett			
Tax Lot:	200 (section 2)	200 (section 36)	500	1600
Acquisition Date:	September 12, 1974	June 26, 1985	December 10, 1975	June 26, 1985

These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted at the time they each acquired each of the tax lots that comprises the subject property, as described above.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on September 12, 1974, for tax lot 200 (section 2); September 23 and December 10, 1975, for tax lot 500; and May 23 and June 26, 1985, for tax lots 200 (section 36) and 1600. On September 12, 1974, tax lot 200 (section 2) was subject to applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition). On September 23 and December 10, 1975, tax lot 500 was subject to applicable provisions of Goal 3 and ORS 215 then in effect. On May 23 and June 26, 1985, tax lots 200 (section 36) and 1600 were subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 5, then in effect.

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

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

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

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on April 2, 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.