



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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May 1, 2007



To: Interested Persons

From: Lane Shetterly, Director

*Re: Ballot Measure 37 (ORS 197.352) Claim Number M130612*

*Claimants: Leroy and Ruth Kropf*

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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. M130612  
(BALLOT MEASURE 37) OF )  
Leroy and Ruth Kropf, CLAIMANTS )

Claimants: Leroy and Ruth Kropf (the Claimants)

Property: Township 14S, Range 4W, Section 13: tax lot 200; Section 36: tax lot 700,  
Linn 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 Leroy and Ruth Kropf's division of the 312.02-acre subject property into thirty 10-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each 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 Ruth Kropf acquired the property on February 20, 1979, and when Leroy Kropf acquired the property on October 3, 1993.

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 when Ruth Kropf acquired the property on February 20, 1979, and when Leroy Kropf acquired the property on October 3, 1993. On February 20, 1979, the property was subject to the applicable provisions of Goal 3 and ORS 215 then in effect. On October 3, 1993, the property was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Linn County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain 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:

  
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Lane Shetterly, Director  
DLCD  
Dated this 1<sup>st</sup> day of May, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
\_\_\_\_\_  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 1<sup>st</sup> day of May, 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**

May 1, 2007

**STATE CLAIM NUMBER:** M130612  
Report A<sup>1</sup>

**NAMES OF CLAIMANTS:** Leroy and Ruth Kropf

**MAILING ADDRESS:** 24305 Powerline Road  
Harrisburg, Oregon 97446

**PROPERTY IDENTIFICATION:** Township 14S, Range 4W  
Section 13: tax lot 200  
Section 36: tax lot 700  
Linn County

**OTHER CONTACT INFORMATION:** Edward F. Schultz  
130 First Avenue W  
Albany, Oregon 97321

**DATE RECEIVED BY DAS:** November 7, 2006

**180-DAY DEADLINE:** May 6, 2007

**I. SUMMARY OF CLAIM**

The claimants, Leroy and Ruth Kropf, seek compensation in the amount of \$2,648,000 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 312.02-acre subject property into thirty 10-acre parcels and to develop a dwelling on each parcel.<sup>2</sup> The subject property is located at 25064 Powerline Road, near Harrisburg, in Linn 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

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<sup>1</sup> Five tax lots were identified in the claim for M130612. This staff report only addresses those tax lots identified above. The remaining tax lots are addressed in companion staff Report B.

<sup>2</sup> The subject property includes two tax lots. Tax lot 200 consists of 156.37 acres and tax lot 700 consists of 155.65 acres.

not apply to Leroy and Ruth Kropf's division of the 312.02-acre subject property into thirty 10-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after each 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 Ruth Kropf acquired the property on February 20, 1979, and Leroy Kropf acquired the property on October 3, 1993. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On March 26, 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, one written comment was received in response to the 10-day notice.

The comment does 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 letter in the department's claim file.)

### **IV. TIMELINESS OF CLAIM**

#### **Requirement**

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

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies 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 November 7, 2006, for processing under OAR 125, division 145. The claim identifies Linn County's Exclusive Farm Use (EFU) zoning, wetland and the Department of State Lands regulations 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 Ruth Kropf first acquired the subject property from her husband, Lloyd Kropf, on January 14, 1946, as reflected by a deed creating an estate in entirety. On February 16, 1979, Lloyd and Ruth Kropf transferred the property to a third party, who then transferred it back to Lloyd and Ruth Kropf on February 20, 1979, as reflected by warranty deeds included with the claim.<sup>3</sup> On August 9, 1985, Lloyd and Ruth Kropf subsequently transferred the property to a revocable trust, the Kropf Trust, as reflected by a deed transfer of real property to living trust included with the claim.<sup>4</sup> Upon the death of Lloyd Kropf on October 3, 1993, Ruth Kropf appointed her son, claimant Leroy Kropf, as trustee of Trust A and B of the Kropf Trust, as reflected by an appointment of successor trustee included with the claim. As provided in the Kropf Trust agreement, upon the death of Lloyd Kropf, an undivided one-half interest in the assets of the Kropf Trust were transferred into Trust B of the Kropf Trust and the other one-half interest remained in Trust A of the Kropf Trust. On that date, Trust B became irrevocable, while Trust A, with Ruth Kropf as trustor and Leroy Kropf as trustee, remained revocable. The Linn County Assessor’s Office confirms the claimants’ current ownership of the subject property.

## **Conclusions**

The claimants, Leroy and Ruth Kropf, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). Ruth Kropf has been an owner since February 20, 1979. Leroy Kropf has been an owner since October 3, 1993. Ruth Kropf is a “family member” of Leroy Kropf as that term is defined by ORS 197.352(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

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<sup>3</sup>The department acknowledges receipt of the claimants’ agent’s correspondence dated April 19, 2007, relative to the department’s finding as to Ruth Kropf’s date of acquisition of the subject property. The department has considered the comment and finds that the record before the department supports the department’s initial determination of her date of acquisition.

<sup>4</sup> Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

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 312.02-acre subject property into thirty 10-acre parcels and to develop a dwelling on each parcel, and that the use is not allowed under current state land use regulations.<sup>5</sup>

The claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land. The claimants' property is zoned EFU by Linn 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.<sup>6</sup> 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 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 became effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Claimant Ruth Kropf acquired the subject property after the adoption of the statewide planning goals, but before the Commission acknowledged Linn County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.<sup>7</sup> Because the Commission had not acknowledged the county's plan and land use regulations when Ruth

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<sup>5</sup> The claimants summarily cite numerous state land use laws as applicable to this claim, but do not establish how the laws either apply to the claimants' desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of these regulations either do not apply to the claimants' property or do not restrict the claimants' desired use of the property with the effect of reducing its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' desired use of the subject property, based on the claimants' description of that desired use.

<sup>6</sup> The claimants' property is "agricultural land" because it contains National Resources Conservation Service Class I-IV soils.

<sup>7</sup> Linn County's comprehensive plan and land use regulations were acknowledged by the Commission for compliance with Goal 3 on July 18, 1985.

Kropf acquired the subject property on February 20, 1979, the statewide planning goals, and Goal 3 in particular, applied directly to the claimants' property when she acquired it.<sup>8</sup> As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the claimants' opportunity to divide the subject property when Ruth Kropf acquired it in 1979 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 February 20, 1979, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition).

No information has been presented in the claim to establish that the claimants' desired division of the subject property into thirty 10-acre 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 thirty dwellings on the subject property satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1973 edition), in effect when Ruth Kropf acquired the subject property.

### **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 enacted or adopted after Ruth Kropf acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when Ruth Kropf acquired the property. However, the claim does not establish whether or the extent to which the claimants' desired use of the subject property complies with the standards for land divisions and development under the requirements of Goal 3 and ORS 215 in effect when Ruth Kropf acquired the subject property on February 20, 1979.

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<sup>8</sup> 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).

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. 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 \$2,648,000 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 claimants' assessment of the subject property's value.

#### **Conclusions**

As explained in Section V.(1) of this report, the claimants are Ruth Kropf who acquired the subject property in 1979 and her son, Leroy Kropf. 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 Ruth Kropf 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 \$2,648,000.

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 Ruth Kropf 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.

### **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 Linn

County has implemented through its current EFU zone. With the exception of provisions of Goal 3 and ORS 215 in effect on February 20, 1979, these land use regulations were enacted or adopted after Ruth Kropf acquired the subject property.

### **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 3 and ORS 215, it appears that the general statutory, goal and rule restrictions on residential division and development of the subject property were not in effect when Ruth Kropf acquired the property on February 20, 1979. As a result, these laws are not exempt under ORS 197.352. Laws in effect when Ruth Kropf acquired the subject property 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.

## **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 \$2,648,000. 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 Ruth Kropf 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 Ruth Kropf to use the subject property for a use permitted at the time she acquired the property on February 20, 1979, and to allow Leroy Kropf to use the property for a use permitted at the time he acquired it on October 3, 1993.

At the time Leroy Kropf acquired the subject property, it was subject to Linn County's acknowledged EFU zone.<sup>9</sup> When Leroy Kropf acquired the subject property, 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. In 1993, ORS 215.263 (1991 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) (1991 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 the subject property was allowed under the standards in effect when Leroy Kropf acquired the property on October 3, 1993.

In addition to the applicable provisions of Goal 3, ORS 215 and OAR 660 in effect when Leroy Kropf acquired the property on October 3, 1993, 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 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 Leroy and Ruth Kropf's division of the 312.02-acre subject property into thirty 10-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired the subject

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<sup>9</sup> Linn County's EFU zone was acknowledged by the Commission for compliance with Goal 3 on July 18, 1985.

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 Ruth Kropf acquired the property on February 20, 1979, and when Leroy Kropf acquired the property on October 3, 1993.

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 when Ruth Kropf acquired the property on February 20, 1979, and when Leroy Kropf acquired the property on October 3, 1993. On February 20, 1979, the property was subject to the applicable provisions of Goal 3 and ORS 215 then in effect. On October 3, 1993, the property was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Linn County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain 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 12, 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.

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. M130612  
(BALLOT MEASURE 37) OF )  
Leroy and Ruth Kropf, CLAIMANTS )

Claimants: Leroy and Ruth Kropf (the Claimants)

Property: Township 14S, Range 4W, Section 26: tax lots 903 and 905; Section 36: tax lot 602, Linn 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 Leroy and Ruth Kropf's development of a dwelling on each of the three tax lots comprising the 185.97-acre subject property: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, 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 Ruth Kropf acquired tax lot 602 on January 14, 1975, and tax lot 905 and the 82.7-acre portion of tax lot 903 on July 13, 1987, when Leroy Kropf acquired tax lots 602, 905 and the 82.7-acre portion of tax lot 903 on October 3, 1993, and when the claimants acquired the 2.25-acre portion of tax lot 903 on October 19, 2005. The department acknowledges that the relief to which claimants are entitled under ORS 197.352 will not allow them to use the 2.25-acre portion of tax lot 903 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 property for the use described in this report, subject to the standards in effect when Ruth Kropf acquired tax lot 602 on January 14, 1975, tax lot 905 and the 82.7-acre portion of tax lot 903 on July 13, 1987, when Leroy Kropf acquired tax lots 602, 905 and the 82.7-acre portion of tax lot 903 on October 3, 1993, and when the claimants acquired the 2.25-acre portion of tax

lot 903. On January 14, 1975, tax lot 602 was subject to the applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition). On July 13, 1987, and October 3, 1993, the property was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Linn County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect. On October 19, 2005, the 2.25-acre portion of tax lot 903 was subject to 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.

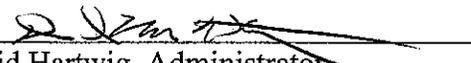
6. Nothing in this report or the State's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

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 1<sup>st</sup> day of May, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 1<sup>st</sup> day of May, 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**

May 1, 2007

**STATE CLAIM NUMBER:** M130612  
Report B<sup>1</sup>

**NAMES OF CLAIMANTS:** Leroy and Ruth Kropf

**MAILING ADDRESS:** 24305 Powerline Road  
Harrisburg, Oregon 97446

**PROPERTY IDENTIFICATION:** Township 14S, Range 4W  
Section 26: tax lots 903 and 905  
Section 36: tax lot 602  
Linn County

**OTHER CONTACT INFORMATION:** Edward F. Schultz  
130 First Avenue W  
Albany, Oregon 97321

**DATE RECEIVED BY DAS:** November 7, 2006

**180-DAY DEADLINE:** May 6, 2007

**I. SUMMARY OF CLAIM**

The claimants, Leroy and Ruth Kropf, seek compensation in the amount of \$282,800 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 develop a dwelling on each of the three tax lots comprising the 185.97-acre subject property.<sup>2</sup> The subject property is located at 25064 Powerline Road, near Harrisburg, in Linn 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 Leroy and Ruth Kropf's development of a dwelling on each of the three tax lots

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<sup>1</sup> Five tax lots were identified in the claim for M130612. This staff report only addresses those tax lots identified above. The remaining tax lots are addressed in companion staff Report A.

<sup>2</sup> The subject property includes three tax lots. Tax lot 602 consists of 11.65 acres, tax lot 903 consists of 84.95 acres and tax lot 905 consists of 89.37 acres.

comprising the 185.97-acre subject property: 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 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 Ruth Kropf acquired tax lot 602 on January 14, 1975, and tax lot 905 and the 82.7-acre portion of tax lot 903 on July 13, 1987; when Leroy Kropf acquired tax lot 602, 905 and the 82.7-acre portion of tax lot 903 on October 3, 1993; and when the claimants acquired the 2.25-acre portion of tax lot 903 on October 19, 2005. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow them to use the 2.25-acre portion of tax lot 903 in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On March 26, 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, one written comment was received in response to the 10-day notice.

The comment does 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 letter in the department's claim file.)

### **IV. TIMELINESS OF CLAIM**

#### **Requirement**

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

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies 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 November 7, 2006, for processing under OAR 125, division 145. The claim identifies Linn County's Exclusive Farm Use (EFU) zoning, wetland

and the Department of State Lands regulations 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 Ruth Kropf acquired tax lot 602 on January 14, 1975, as reflected by a memorandum of agreement and warranty deed included with the claim. On August 9, 1985, Ruth Kropf transferred her interest in tax lot 602 to a revocable trust, the Kropf Trust, as reflected by a deed included with the claim.<sup>3</sup> Ruth Kropf acquired tax lots 903 and 905 on July 13, 1987, as a trustee of the Kropf Trust, as reflected by a land sale contract and warranty deed included with the claim. On June 4, 1991, Ruth Kropf conveyed a 2.25-acre portion of tax lot 903 to her children, Lowell and Jeanette Kropf, as reflected by a bargain and sale deed. On October 3, 1993, Ruth Kropf appointed her son, claimant Leroy Kropf, as trustee of Trusts A and B of the Kropf Trust, as reflected by an appointment of successor trustee included with the claim.<sup>4</sup> Ruth Kropf retained an ownership interest in the subject property as trustor of Trust A of the Kropf Trust, which is a revocable trust. On October 19, 2005, Lowell and Jeanette Kropf conveyed the 2.25-acre portion of tax lot 903 to Leroy Kropf as trustee of Trust A and B of the Kropf Trust, as reflected by a warranty deed included with the claim. The Linn County Assessor’s Office confirms the claimants’ current ownership of the subject property.

### **Conclusions**

The claimants, Leroy and Ruth Kropf, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). Ruth Kropf has been an owner of tax lot 602 since January 14, 1975, of tax lot 905 and the 82.7-acre portion of tax lot 903 since July 13, 1987, and of the 2.25-acre portion of tax lot 903 since October 19, 2005. Leroy Kropf has been an owner of tax lot 602, 905 and the 82.7-acre portion of tax lot 903 since October 3, 1993, and of the 2.25-acre portion of tax lot 903 since October 19, 2005. Ruth Kropf is a “family member” of Leroy Kropf

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

<sup>4</sup> As provided in the Kropf Trust agreement, upon the death of Lloyd Kropf, Ruth Kropf’s husband and co-trustee of the Kropf Trust, an undivided one-half interest in the assets of the Kropf Trust were transferred into Trust B of the Kropf Trust and the other one-half interest remained in Trust A of the Kropf Trust. Upon Lloyd Kropf’s death on October 3, 1993, Trust B became irrevocable, while Trust A, with Ruth Kropf as trustor and Leroy Kropf as trustee, remained revocable.

as that term is defined by ORS 197.352(11)(A). Lowell and Jeanette Kropf are “family members” of Ruth and Leroy Kropf as that term is defined by ORS 197.352(11)(A). The Kropf family first acquired the 2.25-acre portion of tax lot 903 on July 13, 1987.

## **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 develop a dwelling on each of the three tax lots comprising the 185.97-acre subject property, and that the desired use is not allowed under current state land use regulations.

The claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land. The claimants’ property is zoned EFU by Linn 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.<sup>5</sup> 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 215.284 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, establish standards for the development of dwellings on existing or any proposed parcel on that land.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which became effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Ruth Kropf acquired tax lot 602 on January 14, 1975, 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, it was zoned EFU by Linn County. However, 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).<sup>6</sup>

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<sup>5</sup> The claimants’ property is “agricultural land” because it contains National Resources Conservation Service Class I-IV soils.

<sup>6</sup> 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

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).

No information has been provided establishing whether or to what extent the claimants' desired residential development complies with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time Ruth Kropf acquired the tax lot 602 on January 14, 1975.

At the time Ruth Kropf acquired tax lot 905 and the 82.7-acre portion of tax lot 903, and the Kropf family first acquired the 2.25-acre portion of tax lot 903 in 1987, the property was subject to Linn County's acknowledged EFU zone.<sup>7</sup> When Ruth Kropf acquired tax lot 905 and the 82.7-acre portion of tax lot 903 and the Kropf family first acquired the 2.25-acre portion of tax lot 903, 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.<sup>8</sup> ORS 215.283(1)(f) (1985 and 1991 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 development of tax lots 903 and 905, were allowed under the standards in effect when Ruth Kropf acquired tax lot 905 and the 82.7-acre portion of tax lot 903 and the Kropf family first acquired the 2.25-acre portion of tax lot 903 in 1987.

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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).

<sup>7</sup> Linn County's EFU zone was acknowledged by the Commission for compliance with Goal 3 on July 18, 1985.

<sup>8</sup> 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).

## **Conclusions**

The current zoning requirements and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were enacted or adopted after Ruth Kropf acquired tax lot 602 in 1975 and tax lot 905 and the 82.7-acre portion of tax lot 903 in 1987, and after the Kropf family first acquired the 2.25-acre portion of tax lot 903 in 1987, do not allow the claimants' desired development of the subject property. However, the claim does not establish whether or the extent to which the claimants' desired use of tax lot 602 complies with the interim planning goals in effect when Ruth Kropf acquired tax lot 602 on January 14, 1975, nor does the claim establish whether or to what extent the claimants' desired use of tax lots 903 and 905 complies with the standards for land development under Goal 3 and OAR 660, as implemented through Linn County's comprehensive plan and EFU zone and applicable provisions of ORS 215, in effect when Ruth Kropf acquired tax lot 905 and the 82.7-acre portion of tax lot 903 and when the Kropf family acquired the 2.25-acre portion of tax lot 903 on July 13, 1987.

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 \$282,800 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 Ruth Kropf, who acquired tax lot 602 in 1975 and tax lot 905 and the 82.7-acre portion of tax lot 903 in 1987 and whose family acquired the 2.25-acre portion of tax lot 903 in 1987, and her son, Leroy Kropf. 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 Ruth Kropf acquired tax lot 602, 905 and the 82.7-acre portion of tax lot 903 and since the Kropf family first acquired the 2.25-acre portion of tax lot 903, 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 \$282,800.

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 departments.

#### **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 Linn County has implemented through its current EFU zone. With the exception of applicable provisions of ORS 215, including the interim land use planning goals, in effect when Ruth Kropf acquired tax lot 602 in 1975 and amendments of Goal 3, ORS 215 and OAR 660 enacted or adopted after Ruth Kropf acquired tax lot 905 and the 82.7-acre portion of tax lot 903 and the Kropf family acquired the 2.25-acre portion of tax lot 903 in 1987, these land use regulations were enacted or adopted after the claimants and their family acquired the subject property.

#### **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 provisions of ORS 215 in effect on January 14, 1975, when Ruth Kropf acquired tax lot 602 and applicable provisions of Goal 3, ORS 215 and OAR 660 in effect when Ruth Kropf acquired tax lot 905 and the 82.7-acre portion of tax lot 903 and the Kropf family acquired the 2.25-acre portion of tax lot 903 on July 13, 1987, it appears that the general statutory, goal and rule restrictions on residential development of the subject property were not in effect when Ruth Kropf and the Kropf family acquired the subject property. As a result, these laws are not exempt under ORS 197.352. Laws in effect when Ruth Kropf and the Kropf family acquired each of the subject tax lots 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.

### **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 \$282,800. 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 and the claimants' family acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow the claimants to use the subject property for a use permitted at the time Ruth Kropf acquired tax lot 602 on January 14, 1975, tax lot 905 and the 82.7-acre portion of tax lot 903 on July 13, 1987, and the 2.25-acre portion of tax lot 903 on October 19, 2005; and at the time Leroy Kropf acquired tax lots 602, 905 and the 82.7-acre portion of tax lot 903 on October 3, 1993, and the 2.25-acre portion of tax lot 903 on October 19, 2005.

At the time Leroy Kropf acquired tax lots 602, 905 and the 82.7-acre portion of tax lot 903, it was subject to Linn County's acknowledged EFU zone. When Leroy Kropf acquired tax lots 602, 905 and the 82.7-acre portion of tax lot 903, his 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, as described above in Section V.(2) of this report.

The claim does not establish whether or to what extent the claimants desired development of tax lots 602, 905 and the 82.7-acre portion of tax lot 903 was allowed under the standards in effect when he acquired the property on October 3, 1993.

At the time the claimants acquired the 2.25-acre portion of tax lot 903 in 2005, it was zoned EFU by Linn County and subject to the current 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 applicable provisions of Goal 3, ORS 215 and OAR 660 in effect when Leroy Kropf acquired tax lots 602, 905 and the 82.7-acre portion of tax lot 903 on October 3, 1993, and when the claimants acquired the 2.25-acre portion of tax lot 903 in 2005, and other laws in effect when 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, 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 Leroy and Ruth Kropf's development of a dwelling on each of the three tax lots comprising the 185.97-acre subject property: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, 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 Ruth Kropf acquired tax lot 602 on January 14, 1975, and tax lot 905 and the 82.7-acre portion of tax lot 903 on July 13, 1987, when Leroy Kropf acquired tax lots 602, 905 and the 82.7-acre portion of tax lot 903 on October 3, 1993, and when the claimants acquired the 2.25-acre portion of tax lot 903 on October 19, 2005. The department acknowledges that the relief to which claimants are entitled under ORS 197.352 will not allow them to use the 2.25-acre portion of tax lot 903 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 property for the use described in this report, subject to the standards in effect when Ruth Kropf acquired tax lot 602 on January 14, 1975, tax lot 905 and the 82.7-acre portion of tax lot 903 on July 13, 1987, when Leroy Kropf acquired tax lots 602, 905 and the 82.7-acre portion of tax lot 903 on October 3, 1993, and when the claimants acquired the 2.25-acre portion of tax lot 903. On January 14, 1975, tax lot 602 was subject to the applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition). On July 13, 1987, and October 3, 1993, the property was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Linn County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect. On October 19, 2005, the 2.25-acre portion of tax lot 903 was subject to 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.

6. Nothing in this report or the State's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on April 12, 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.