



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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August 24, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130789

Claimants: Joseph T. Serres, Inc., Serres Farm, LLC, Frances O'Connor, Paul Serres, Ruth Serres Thompson, Mary Grant, Rebecca Kirsch, Susan Duncan, Patricia Serres

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. M130789
(BALLOT MEASURE 37) OF)	
Joseph T. Serres, Inc., CLAIMANTS)	

Claimants: Joseph T. Serres, Inc

Property: Township 5S, Range 1W, Section 16: tax lot 1400
Township 5S, Range 1W, Section 17: tax lots 100, 200 and 300
Township 5S, Range 1W, Section 17A: tax lots 500, 600, 700 and 1000
Township 5S, Range 1W, Section 17D: tax lots 200, 500, 900 and 1000
Marion 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 Joseph T. Serres, Inc.'s division of 346 acres of the 384-acre subject property into 150 parcels and to its development of a dwelling on each parcel, and to its development the remaining 38 acres for mixed commercial, industrial and residential use: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after December 23, 1974. These land use regulations will not apply to Joseph T. Serres, Inc. only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the property on December 23, 1974.
2. The action by the State of Oregon provides the state's authorization to Joseph T. Serres, Inc. to use the subject property for the use described in this report, subject to the standards in effect on December 23, 1974. On that date, the property 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)(one of which requires preserving prime farm land.)

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 Joseph T. Serres, Inc. first obtains 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 Joseph T. Serres, Inc. 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 Joseph T. Serres, Inc. to use the subject property, it may be necessary for it 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 Joseph T. Serres, Inc. 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 its use of the subject property.

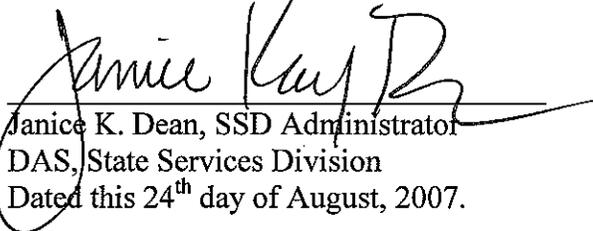
6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

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 24th day of August, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Janice K. Dean, SSD Administrator
DAS, State Services Division
Dated this 24th day of August, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

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

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

FOR INFORMATION ONLY

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

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR) FINAL ORDER B
COMPENSATION UNDER ORS 197.352) CLAIM NO. M130789
(BALLOT MEASURE 37) OF)
Serres Farm, LLC, Frances O'Connor, Paul Serres,)
Ruth Serres Thompson, Mary Grant, Rebecca Kirsch,)
Susan Duncan and Patricia Serres, CLAIMANTS)

Claimants: Serres Farm, LLC, Frances O'Connor, Paul Serres, Ruth Serres
Thompson, Mary Grant, Rebecca Kirsch, Susan Duncan and
Patricia Serres (the Claimants)

Property: Township 5S, Range 1W, Section 16: tax lot 1400
Township 5S, Range 1W, Section 17: tax lots 100, 200 and 300
Township 5S, Range 1W, Section 17A: tax lots 500, 600, 700 and 1000
Township 5S, Range 1W, Section 17D: tax lots 200, 500, 900 and 1000
Marion County (the Property) (the Property)

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

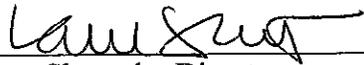
Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under
OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred
the Claim to the Department of Land Conservation and Development (DLCD) as the
regulating entity. This order is based on the record herein,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

ORDER

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

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

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:


Lane Shetterly, Director
DLCD
Dated this 24th day of August, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Janice K. Dean, SSD Administrator
DAS, State Services Division
Dated this 24th day of August, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

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

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

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

August 24, 2007

STATE CLAIM NUMBER: M130789

NAMES OF CLAIMANTS: Joseph T. Serres, Inc.
Serres Farm, LLC
Frances O'Connor
Paul Serres
Ruth Serres Thompson
Mary Grant
Rebecca Kirsch
Susan Duncan
Patricia Serres

MAILING ADDRESSES: Joseph T. Serres, Inc.
1840 East Lincoln Road
Woodburn, Oregon 97071

Serres Farm, LLC
1769 East Lincoln Road
Woodburn, Oregon 97071

Frances O'Connor
5466 Renaissance Avenue
San Diego, California 92122

Paul Serres
11283 Serres Lane NE
Woodburn, Oregon 97071

Ruth Serres Thompson
PO Box 375
Woodburn, Oregon 97071

Mary Grant
14265 Downs Road NE
Mt. Angel, Oregon 97362

Rebecca Kirsch
1930 Hardcastle Avenue
Woodburn, Oregon 97071

Susan Duncan
1840 East Lincoln Road
Woodburn, Oregon 97071

Patricia Serres
PO Box 1035
Mt. Angel, Oregon 97362

PROPERTY IDENTIFICATION:

Township 5S, Range 1W
Section 16: tax lot 1400
Section 17: tax lots 100, 200 and 300
Section 17A: tax lots 500, 600, 700 and 1000
Section 17D: tax lots 200, 500, 900 and 1000
Marion County

OTHER CONTACT INFORMATION:

Richard C. Stein
1395 Liberty Street SE, Suite 101
Salem, Oregon 97302

DATE RECEIVED BY DAS:

November 16, 2006

DEADLINE FOR FINAL ACTION:¹

May 9, 2008

I. SUMMARY OF CLAIM

The claimants, Joseph T. Serres, Inc., Serres Farm, LLC, Frances O'Conner, Paul and Patricia Serres, Ruth Thompson, Mary Grant, Rebecca Kirsch and Susan Duncan, seek compensation in the amount of \$22,935,602 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 346 acres of the 384-acre subject property into 150 parcels and to develop a dwelling on each parcel, and to develop the remaining 38 acres for mixed commercial, industrial and residential use. The subject property is located in the 11,000 and 11,300 block of Serres Lane NE, near Woodburn, in Marion County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid in part. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Joseph T. Serres, Inc.'s division of 346 acres of the 384-acre

¹ ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

subject property into 150 parcels and to its development of a dwelling on each parcel, and to its development the remaining 38 acres for mixed commercial, industrial and residential use: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after December 23, 1974. These laws will not apply to Joseph T. Serres, Inc. only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the property on December 23, 1974.

The department has further determined that the claim is not valid as to Serres Farms, LLC because its desired use of the subject property was prohibited under the laws in effect when it acquired the property in 2001. The department has also determined that the claim is not valid as to Frances O'Conner, Paul and Patricia Serres, Ruth Thompson, Mary Grant, Rebecca Kirsch and Susan Duncan because these claimants are not owners of the subject property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On May 24, 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 is relevant to whether the laws that are the basis for the claim are exempt under ORS 197.352(3). The comment has been considered by the department in preparing this report. (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 16, 2006, for processing under OAR 125, division 145. The claim identifies "[a]ny land use laws or regulations enacted after Claimants' acquisition date of the property on March 26, 1973"; Goals 2 (Land Use Planning), 3, 11 (Public

Facilities and Services), 12 (Transportation), 13 (Energy Conservation) and 14 (Urbanization); ORS 215; OAR 660, divisions 4, 9, 11, 15, and 33; and Marion County zoning ordinances as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

Claimants Frances O’Conner, Paul and Patricia Serres, Ruth Thompson, Mary Grant, Rebecca Kirsch and Susan Duncan assert that they acquired an undivided one-half interest in the subject property on December 26, 1973, the date of Joseph Serres’ death. However, the documentation provided in the claim does not substantiate that acquisition date.

The claim documentation establishes that, prior to his death, Joseph Serres and his wife, Adela Serres, each owned an undivided one-half interest in the subject property. Upon Joseph Serres’ death, Adela Serres, as personal representative of the Estate of Joseph T. Serres, conveyed his one-half interest in the subject property to trustee First National Bank of Oregon, reserving in herself a life estate on June 18, 1975, as reflected by a deed included with the claim.

On December 23, 1974, Adela Serres conveyed her one-half interest in the subject property to claimant Joseph T. Serres, Inc.,² as reflected by a bargain and sale deed included with the claim.

On November 3, 1982, First Interstate Bank of Oregon, successor trustee, conveyed to Adela Serres a life estate in the one-half interest held in trust and conveyed the remainder to Frances O’Conner, Paul and Patricia Serres, Ruth Thompson, Mary Grant, Rebecca Kirsch and Susan Duncan, as reflected by a deed of testamentary trustee included with the claim. Frances O’Conner’s, Paul and Patricia Serres’, Ruth Thompson’s, Mary Grant’s, Rebecca Kirsch’s and Susan Duncan’s interest did not provide them with any present right to use the subject property during the life of Adela Serres.

Claimants Frances O’Conner, Paul and Patricia Serres, Ruth Thompson, Mary Grant, Rebecca Kirsch and Susan Duncan acquired an interest and right to use the property on February 10, 2000, as evidenced by a Social Security death index search for Adela Serres. On February 5,

² Joseph T. Serres, Inc. is a domestic business corporation registered with the Oregon Secretary of State.

2001, Frances O'Conner, Paul and Patricia Serres, Ruth Thompson, Mary Grant, Rebecca Kirsch and Susan Duncan conveyed their interest in the subject property to claimant Serres Farms, LLC,³ as reflected by a bargain and sale deed included with the claim.

The Marion County Assessor's Office confirms Joseph T. Serres, Inc.'s and Serres Farms, LLC's current ownership of the subject property. Claimants Frances O'Conner, Paul and Patricia Serres, Ruth Thompson, Mary Grant, Rebecca Kirsch and Susan Duncan are not owners of the subject property.

Conclusions

Claimants Joseph T. Serres, Inc. and Serres Farms, LLC are "owners" of the subject property as that term is defined by ORS 197.352(11)(C). Joseph T. Serres, Inc. has been an owner since December 23, 1974, and Serres Farms, LLC has been an owner since February 5, 2001.⁴ Claimants Frances O'Conner, Paul and Patricia Serres, Ruth Thompson, Mary Grant, Rebecca Kirsch and Susan Duncan are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C).

2. The Laws That are the Basis for This Claim

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

Findings of Fact

The claim indicates that the claimants desire to divide 346 acres of the 384-acre subject property into 150 parcels and to develop a dwelling on each parcel, and to develop the remaining 38 acres for mixed commercial, industrial and residential use. The claim indicates that current land use regulations prevent the desired use.⁵

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 subject property is zoned EFU by Marion County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3.⁶ Goal 3 became

³ Serres Farms, LLC is a domestic limited liability company registered with the Oregon Secretary of State.

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

⁵ The claimants summarily list 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 the regulations either do not apply to the subject property or do not restrict the 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 their desired use.

⁶ The subject property is "agricultural land" because it contains Natural Resources Conservation Service (NRCS) Class I-IV soils.

effective on January 25, 1975, and required that agricultural land as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.283, 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, establish standards for development of dwellings on existing or proposed parcels on EFU-zoned land and provide for a limited number of specified non-agricultural uses on EFU-zoned 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, 1994.⁷ OAR 660-033-0120, Table 1 establishes the list of non-agricultural activities allowed on agricultural lands, which are generally restricted to commercial activities in conjunction with a farm use. Industrial uses are generally not permitted on EFU-zoned land.

Joseph T. Serres, Inc. acquired the subject property on December 23, 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, all of the property, except tax lot 200 (Section 17D), was zoned Residential Agriculture (RA) by Marion County. The RA zone allowed a 6,000-square foot minimum lot size for new lots or parcels with a state approved sewer system. Tax lot 200 (Section 17D) was zoned Light Industrial (M-1).

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 “[l]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). Joseph T. Serres, Inc.’s desired use includes subdivision of its land. If Joseph T. Serres, Inc. 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 215.515.⁸

⁷ The Commission adopted amendments to OAR 660-033-0100, -0130 and -0135 to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. These amendments clarified but did not further restrict dwelling standards for EFU-zoned land.

⁸ 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).

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. Fifty-three percent (27 acres) of the soils on tax lot 1400 (Section 14), 77 percent (149.77 acres) of the soils on tax lots 100, 200 and 300 (Section 17), 52 percent (24 acres) of the soils on tax lots 500, 600, 700 and 1000 (Section 17A) and 66 percent (56 acres) of the soils on tax lots 200 and 500 (Section 17D) are rated as “prime” by the Natural Resource Conservation Service (NRCS).⁹

No information has been provided establishing whether or to what extent Joseph T. Serres, Inc.’s desired division of the subject property for residential and commercial/industrial development complies with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time it acquired the property on December 23, 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.”

Serres Farms, LLC acquired the subject property on February 5, 2001, after the adoption of the statewide planning goals and their implementing statutes and regulations, as identified above.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after Joseph T. Serres, Inc. acquired the subject property in 1974 and do not allow the desired division or development of the property. However, the claim does not establish whether or to what extent Joseph T. Serres, Inc.’s desired use of the subject property complies with the interim planning goals in effect when it acquired the property on December 23, 1974. Laws enacted or adopted since Serres Farms, LLC acquired the subject property in 2001 do not restrict its desired use of the property relative to when it acquired the property in 2001.

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).

⁹ NRCS soil survey for Marion County.

As explained in Section V.(1), claimants Frances O'Conner, Paul and Patricia Serres, Ruth Thompson, Mary Grant, Rebecca Kirsch and Susan Duncan are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict their use of the subject real property with the effect of reducing the fair market value of the property.

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 Joseph T. Serres, Inc.'s use of the subject property, and that may continue to apply to its 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 Joseph T. Serres, Inc. seeks 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 \$22,935,602 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 Joseph T. Serres, Inc., Serres Farm LLC, Frances O'Conner, Paul and Patricia Serres, Ruth Thompson, Mary Grant, Rebecca Kirsch and Susan Duncan. Joseph T. Serres, Inc. acquired the subject property on December 23, 1974, and Serres Farms, LLC acquired the subject property on February 5, 2001. No state laws enacted or adopted since Serres Farms, LLC acquired the subject property restrict the use of the property relative to the uses allowed 2001. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Commission or the department as to Serres Farms, LLC.

As explained in Section V.(1) of this report, claimants Frances O'Conner, Paul and Patricia Serres, Ruth Thompson, Mary Grant, Rebecca Kirsch and Susan Duncan are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict their use of the subject property with the effect of reducing the fair market value of the subject property.

Under ORS 197.352, Joseph T. Serres, Inc. is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since Joseph T. Serres, Inc. acquired the subject property restrict its 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 \$22,935,602.

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

4. Exemptions Under ORS 197.352(3)

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

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Marion 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 on December 23, 1974, these state land use regulations were not in effect when Joseph T. Serres, Inc. acquired the property. As set forth in Section V.(2) of this report, all of the state land use regulations that restrict Serres Farms, LLC's desired use of the subject property were in effect when it acquired the property in 2001.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that, with the exception of provisions of ORS 215 in effect on December 23, 1974, the general statutory, goal and rule restrictions on division and development of Joseph T. Serres, Inc.'s property were not in effect when it acquired the property. As a result, these laws are not exempt under ORS 197.352(3)(E) as to Joseph T. Serres, Inc. Provisions of ORS 215, including the interim statewide planning goals in effect when Joseph T. Serres, Inc. acquired the subject property on December 23, 1974, are exempt under ORS 197.352(3)(E) and will continue to apply to Joseph T. Serres, Inc.'s use of the property. All of the state land use regulations that restrict Serres Farms, LLC's desired use of the subject property were in effect when it acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when Serres Farms, LLC acquired the subject property.

As explained in Section V.(1) of this report, claimants Frances O'Conner, Paul and Patricia Serres, Ruth Thompson, Mary Grant, Rebecca Kirsch and Susan Duncan are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to their claim.

Other laws in effect when Joseph T. Serres, Inc. acquired the subject property are also exempt under ORS 197.352(3)(E) and will continue to apply to its use of the property. There may be other laws that continue to apply to Joseph T. Serres, Inc.'s use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When Joseph T. Serres, Inc. seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to Joseph T. Serres, Inc.'s use of the subject property.

VI. FORM OF RELIEF

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

Findings of Fact

Based on the record, the department finds that the claim is not valid as to Frances O'Conner, Paul and Patricia Serres, Ruth Thompson, Mary Grant, Rebecca Kirsch and Susan Duncan because they are not owners of the subject property. Additionally, laws enforced by the Commission or the department do not restrict Serres Farms, LLC's desired use of the subject property relative to what was permitted when it acquired the property in 2001 and do not reduce the fair market value of the property. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E) as to Serres Farms, LLC.

The department further finds laws enforced by the Commission or the department restrict Joseph T. Serres, Inc.'s desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$22,935,602. 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 Joseph T. Serres, Inc.'s desired use of the subject property was allowed under the standards in effect when it 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 Joseph T. Serres, Inc. to use the subject property for a use permitted at the time it acquired the property on December 23, 1974.

Conclusions

Based on the record before the department, claimants Frances O'Conner, Paul and Patricia Serres, Ruth Thompson, Mary Grant, Rebecca Kirsch and Susan Duncan have not established that they are entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because they are not owners of the subject property. Claimant Serres Farms, LLC has not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because no state land use regulations restrict its desired use of the property relative to uses permitted when it acquired the property, with the effect of reducing the property's fair market value. Therefore, the department recommends that this claim be denied as to Frances O'Conner, Paul and Patricia Serres, Ruth Thompson, Mary Grant, Rebecca Kirsch, Susan Duncan and Serres Farms, LLC.

The department otherwise recommends that the claim be approved as to Joseph T. Serres, Inc., 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 Joseph T. Serres, Inc.'s division of 346 acres of the 384-acre subject property into 150 parcels and to its development of a dwelling on each parcel, and to its development the remaining 38 acres for mixed commercial, industrial and residential use: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after December 23, 1974. These land use regulations will not apply to Joseph T. Serres, Inc. only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the property on December 23, 1974.
2. The action by the State of Oregon provides the state's authorization to Joseph T. Serres, Inc. to use the subject property for the use described in this report, subject to the standards in effect on December 23, 1974. On that date, the property 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)(one of which requires preserving prime farm land.)
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 Joseph T. Serres, Inc. first obtains 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 Joseph T. Serres, Inc. 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 Joseph T. Serres, Inc. to use the subject property, it may be necessary for it 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 Joseph T. Serres, Inc. 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 its use of the subject property.

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 July 9, 2007. OAR 125-145 0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation.