



Oregon

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Department of Land Conservation and Development

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October 24, 2007

To: Interested Persons
From: Cora R. Parker, Acting Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130891

Claimants: Theresa, Ray E. and Judy L. Steele

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
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M130891
(BALLOT MEASURE 37) OF)	
Ray E. and Judy L. Steele and)	
Theresa M. Steele, CLAIMANTS)	

Claimants: Ray and Judy L. Steele (the Claimants)

Property: Township 7S, Range 4W, Section 34, Tax lots 300, 301 and 302
Polk 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 for 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 the claimants' division of tax lots 300 and 302 and to Ray and Judy Steele's division of tax lot 301 into 1- to 5-acre parcels, and to their development of a dwelling, RV storage buildings or an industrial use on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired the subject tax lots. These laws will not apply to the claimants only to the extent necessary to allow the claimants to use tax lots 300 and 302 and to allow Ray and Judy Steele to use tax lot 301 for the use described in this report, and only to the extent that use was permitted when Ray and Judy Steele acquired tax lot 301 on June 16, 1975; when Ray and Theresa Steele acquired tax lot 302 on July 27, 1977, and tax lot 300 on April 26, 1990; and when Judy Steele acquired tax lots 300 and 302 on March 8, 2001. The department acknowledges that the relief to which Judy Steele is entitled for tax lots 300 and 302 under ORS 197.352 will not allow her to use those tax lots in the manner set forth in the claim and that otherwise the relief to which the claimants are entitled may not allow them to use the property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lots 300 and 302 and to Ray and Judy Steele to use tax lot 301 for the use described in this report, subject to the standards in effect, as identified above. On June 16, 1975, and July 27, 1977, tax lots 301 and 302 were subject to applicable provisions of Goal 3 and ORS 215 then in effect. On April 26, 1990, tax lot 300 was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Polk County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect. On March 8, 2001, tax lots 300 and 302 were 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 Acting 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 Manager for the Measure 37 Services Unit 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:


Cora R. Parker, Acting Director
DLCD

Dated this 24th day of October, 2007.

FINAL ORDER

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Carla Ploederer, Manager

DAS, Measure 37 Services Unit

Dated this 24th day of October, 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

October 24, 2007

STATE CLAIM NUMBER: M130891

NAMES OF CLAIMANTS: Ray E. and Judy L. Steele
Theresa M. Steele

MAILING ADDRESS: Ray and Judy Steele
970 Greenwood Road
Independence, Oregon 97351

Theresa Steele
1100 Greenwood Road
Independence, Oregon 97351

PROPERTY IDENTIFICATION: Township 7S, Range 4W, Section 34
Tax lots 300, 301 and 302
Polk County

DATE RECEIVED BY DAS: November 20, 2006

DEADLINE FOR FINAL ACTION:¹ May 13, 2008

I. SUMMARY OF CLAIM

The claimants, Ray, Judy and Theresa Steele, seek compensation in the amount of \$2.08 million 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 79.7-acre subject property into 1- to 5-acre parcels, and to develop a dwelling, RV storage buildings or an industrial use on each parcel.² The subject property is located at 970 Greenwood Road, near Independence, in Polk County. (See claim.)

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.

² The subject property includes three tax lots. Tax lot 300 consists of 37.67 acres, tax lot 301 consists of 4.91 acres and tax lot 302 consists of 37.12 acres.

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid in part. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to the claimants' division of tax lots 300 and 302 and to Ray and Judy Steele's division of tax lot 301 into 1- to 5-acre parcels, and to their development of a dwelling, RV storage buildings or an industrial use 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 tax lots. These laws will not apply to the claimants only to the extent necessary to allow the claimants to use tax lots 300 and 302 and to allow Ray and Judy Steele to use tax lot 301 for the use described in this report, and only to the extent that use was permitted when Ray and Judy Steele acquired tax lot 301 on June 16, 1975; when Ray and Theresa Steele acquired tax lot 302 on July 27, 1977, and tax lot 300 on April 26, 1990, and when Judy Steele acquired tax lots 300 and 302 on March 8, 2001. The department acknowledges that the relief to which Judy Steele is entitled for tax lots 300 and 302 under ORS 197.352 will not allow her to use those tax lots in the manner set forth in the claim, and that otherwise the relief to which the claimants are entitled may not allow them to use the property in the manner set forth in the claim.

The department has further determined that this claim is not valid as to Theresa Steele for tax lot 301 because the claimants have not established her ownership of tax lot 301. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 4, 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, three written comments were received in response to the 15-day notice.

Two of the comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law.

One of the comments is relevant to when the claimants became the present owners of the subject property. The comment has been considered by the department in preparing this report. (See the comment letters in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

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

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

Findings of Fact

This claim was submitted to DAS on November 20, 2006, for processing under OAR 125, division 145. The claim identifies Goal 3, ORS 215 and OAR 660, division 33, 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 Ray and Theresa Steele first acquired from their family members, Russell and Doris Steele, tax lot 302 on July 26, 1977, and tax lot 300 on July 28, 1977, as reflected by bargain and sale deeds included with the claim. However, the deed by which Ray and Theresa Steele acquired tax lot 302 was subject to a life estate in favor of Russell Steele, which reserved in him the exclusive right to use that tax lot during his lifetime; and the deed by which Ray and Theresa Steele acquired tax lot 300 was subject to a life estate in favor of Doris Steele, which reserved in her the exclusive right to use that tax lot during her lifetime. Ray and Theresa Steele’s interest in tax lot 300 did not provide them with any present right to the use tax lot 300 during Russell Steele’s lifetime, and their interest in tax lot 302 did not provide them with any present right to

use tax lot 302 during Doris Steele's lifetime. Ray and Theresa Steele acquired their present interest and right to use tax lot 302 on July 27, 1977, and acquired their present interest and right to use tax lot 300 on April 26, 1990, as evidenced by death verifications for Russell and Doris Steele from the Department of Human Services. On March 8, 2001, Ray Steele conveyed an interest in tax lots 300 and 302 to his wife, Judy Steele, as reflected by a warranty deed included with the claim. On the same day, Ray and Judy Steele transferred their interest in tax lots 300 and 302 to the Steele Family Revocable Living Trust, as reflected by a warranty deed included with the claim.³

Ray and Judy Steele acquired tax lot 301 from Russell and Doris Steele on June 16, 1975, as reflected by a deed provided by Polk County's Community Development Department. On February 28, 2001, Ray and Judy Steele transferred their interest in tax lot 301 to the Steele Family Revocable Living Trust, with themselves as trustees, as evidenced by a warranty deed included with the claim.

Russell and Doris Steele acquired the subject property on March 28, 1951, as reflected by a warranty deed provided by Polk County's Community Development Department.

The claim does not assert whether or when Theresa Steele acquired tax lot 301 and does not include copies of any deeds or otherwise establish that she is an owner of tax lot 301. The Polk County Assessor's Office confirms the claimants' current ownership of tax lots 300 and 302 and Ray and Judy Steele's current ownership of tax lot 301.

Conclusions

The claimants, Ray, Judy and Theresa Steele, are "owners" of tax lots 300 and 302 and Ray and Judy Steele are "owners" of tax lot 301 as that term is defined by ORS 197.352(11)(C). Ray and Judy Steele have been owners of tax lot 301 since June 16, 1975. Ray and Theresa Steele have been owners of tax lot 302 since July 27, 1977, and of tax lot 300 since April 26, 1990. Judy Steele has been an owner of tax lots 300 and 302 since March 8, 2001. Theresa Steele has not established that she is an "owner" of tax lot 301 as that term is defined in ORS 197.352(11)(C). Russell and Doris Steele are "family members" as defined by ORS 197.352(11)(A) and acquired the subject property on March 28, 1951.

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 79.7-acre subject property into 1- to 5-acre parcels, and to develop a dwelling, RV storage buildings or an industrial use on each parcel, and that current land use regulations prevent the desired use.

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

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimants' property is zoned EFU by Polk 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 3.⁴ 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; establish standards for the development of dwellings on existing or any proposed parcel on that land and establish standards for commercial and other non-farm uses on existing or proposed parcels 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. ORS 215.283 prohibits commercial and other non-farm uses except those specifically listed, which are generally in conjunction with farm or forest use.

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, 1994.⁵

The claimants' family first acquired the subject property in 1951, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1951.

Conclusions

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

As explained in Section V.(1) above, Theresa Steele has not established that she is an "owner" of tax lot 301 as that term is defined in ORS 197.352(11)(C). Without such demonstration, it is not possible to determine that any laws enforced by the Commission or the department restrict Theresa Steele's desired use of tax lot 301 with the effect of reducing the fair market value of the property relative to how the property could have been used at the time she or a family member may have acquired the property.

⁴ The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

⁵ The Commission subsequently 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.

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 \$2.08 million 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 Ray, Judy and Theresa Steele whose family members acquired the subject property in 1951. As explained in Section V.(1) of this report, Theresa Steele has not established her ownership of tax lot 301. Without such demonstration, the department can make no determination on the effect of any land use regulations on the fair market value of tax lot 301 as to Theresa Steele. Under ORS 197.352, the claimants are otherwise due compensation for land use regulations that restrict the use of the property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants’ family acquired the subject property restrict the claimants’ desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$2.08 million.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the claimants’ family acquired the property.

4. Exemptions Under ORS 197.352(3)

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

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Polk County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after the claimants’ family acquired the subject property.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimants' family acquired the property on March 28, 1951. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimants' family acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

As explained in Section V.(1) of this report, Theresa Steele has not established that she is an "owner" of tax lot 301 as that term is defined in ORS 197.352(11)(C). Without such demonstration, the department can make no determination as to whether any land use laws are exempt from ORS 197.352 as to her for tax lot 301.

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 Theresa Steele for tax lot 301 because the claimants have not demonstrated her ownership of tax lot 301 or established the date she acquired that tax lot. The department otherwise finds laws enforced by the Commission or the department restrict the claimants' desired use of tax lots 300 and 302 and Ray and Judy Steele's desired use of tax lot 301. 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 \$2.08 million. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when the claimants' family acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Ray and Judy to use tax lot 301 for a use permitted at the time they acquired tax lot 301 on June 16, 1975; to allow Ray and Theresa Steele to use

tax lots 300 and 302 for a use permitted at the time they acquired tax lot 302 on July 27, 1977, and tax lot 300 on April 26, 1990; and to allow Judy Steele to use tax lots 300 and 302 for a use permitted at the time she acquired those tax lots on March 8, 2001.

Ray and Judy Steele acquired tax lot 301 and Ray and Theresa Steele acquired tax lot 302 after the adoption of the statewide planning goals, but before the Commission acknowledged Polk County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.⁶ Because the Commission had not acknowledged the county's plan and land use regulations when Ray and Judy Steele acquired tax lot 301 on June 16, 1975, and Ray and Theresa Steele acquired tax lot 302 on July 27, 1977, the statewide planning goals, and Goal 3 in particular, applied directly to the property when they acquired those tax lots.⁷

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, Ray and Judy Steele's opportunity to divide tax lot 301 when they acquired it in 1975 and Ray and Theresa Steele's opportunity to divide tax lot 302 when they acquired it in 1977 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 June 16, 1975, and July 27, 1977, 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). Commercial uses and other specified non-farm uses were allowed if they were "in conjunction with farm use."

The claim does not establish whether or to what extent Ray and Judy Steele's desired division and development of tax lot 301 and Ray and Theresa Steele's desired division and development of tax lot 302 were allowed under the standards in effect when Ray and Judy Steele acquired tax lot 301 on June 16, 1975, and when Ray and Theresa Steele acquired tax lot 302 on July 27, 1977.

⁶ Polk County's comprehensive plan and land use regulations were acknowledged by the Commission for compliance with Goal 3 on April 22, 1988.

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

At the time Ray and Theresa Steele acquired tax lot 300, it was subject to Polk County's acknowledged comprehensive plan and EFU zone. At that time, Ray and Theresa Steele desired use of tax lot 300 would have been subject to compliance with Goal 3, and OAR 660, division 5, as implemented through the county's acknowledged EFU zone, and the applicable provisions of ORS 215 then in effect.⁸ In 1990, ORS 215.263 (1989 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) (1989 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. Commercial and other non-farm uses were allowed under ORS 215.283(2) only to the extent they were "in conjunction with farm use."

The claim does not establish whether or to what extent Ray and Theresa Steele's desired division and development of tax lot 300 were allowed under the standards in effect when they acquired tax lot 300 on April 26, 1990.

At the time Judy Steele acquired an interest in tax lots 300 and 302, the property was zoned EFU by Polk County and subject to the current lot size and dwelling standards under Goal 3, ORS 215 and OAR 660, division 33, and as described in Section V.(2) of this report.

In addition to the applicable provisions of Goal 3 and ORS 215 in effect on June 16, 1975, when Ray and Judy Steele acquired tax lot 301 and on July 27, 1977, when Ray and Theresa Steele acquired tax lot 302; applicable provisions of Goal 3, ORS 215 and OAR 660 in effect on April 26, 1990, when Ray and Theresa Steele acquired tax lot 300, and applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, in effect on March 8, 2001, when Judy Steele acquired tax lots 300 and 302, 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 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

⁸ 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).

greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the property.

Conclusions

Based on the record before the department, Theresa Steele has not established that she is entitled to relief under ORS 197.352(1) for tax lot 301 as a result of land use regulations enforced by the Commission or the department because the claimants have not established that she is an owner of tax lot 301. Therefore, the department recommends that this claim be denied as to Theresa Steele for tax lot 301.

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to the claimants' division of tax lots 300 and 302 and to Ray and Judy Steele's division of tax lot 301 into 1- to 5-acre parcels, and to their development of a dwelling, RV storage buildings or an industrial use on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired the subject tax lots. These laws will not apply to the claimants only to the extent necessary to allow the claimants to use tax lots 300 and 302 and to allow Ray and Judy Steele to use tax lot 301 for the use described in this report, and only to the extent that use was permitted when Ray and Judy Steele acquired tax lot 301 on June 16, 1975; when Ray and Theresa Steele acquired tax lot 302 on July 27, 1977, and tax lot 300 on April 26, 1990; and when Judy Steele acquired tax lots 300 and 302 on March 8, 2001. The department acknowledges that the relief to which Judy Steele is entitled for tax lots 300 and 302 under ORS 197.352 will not allow her to use those tax lots in the manner set forth in the claim and that otherwise the relief to which the claimants are entitled may not allow them to use the property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lots 300 and 302 and to Ray and Judy Steele to use tax lot 301 for the use described in this report, subject to the standards in effect, as identified above. On June 16, 1975, and July 27, 1977, tax lots 301 and 302 were subject to applicable provisions of Goal 3 and ORS 215 then in effect. On April 26, 1990, tax lot 300 was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Polk County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect. On March 8, 2001, tax lots 300 and 302 were 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 October 18, 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.