Oregon
Theodore R. Kulongoski, Governor

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August 27, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130905

Claimants: Delmer and Evelyn Wagner

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. M130905
(BALLOT MEASURE 37) OF	)	
Delmer and Evelyn Wagner, CLAIMANTS	)	

Claimants: Delmer and Evelyn Wagner (the Claimants)

Property: Township 34S, Range 4W, Section 29, Tax lots 201, 202, 204 and 205
Jackson 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 Delmer and Evelyn Wagner's division of tax lots 201 and 202 into eight parcels, and to their development of a dwelling on each resulting undeveloped parcel or to their development of a dwelling on each tax lot 204 and 205: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after December 18, 1986. 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 they acquired the property on December 18, 1986. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 may not allow the claimants to use tax lots 201 and 202 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 on December 18, 1986. On that date, the property was subject to compliance with Goal 4 and OAR 660, division 6, as implemented through Jackson County's acknowledged comprehensive plan and WR zone.

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 27th day of August, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Janice K. Dean, SSD Administrator
DAS, State Services Division
Dated this 27th 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."

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

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

August 27, 2007

STATE CLAIM NUMBER:	M130905
NAMES OF CLAIMANTS:	Delmer and Evelyn Wagner
MAILING ADDRESS:	36505 Ditch Creek Road Rogue River, Oregon 97537
PROPERTY IDENTIFICATION:	Township 34S, Range 4W, Section 29 Tax lots 201, 202, 204 and 205 Jackson County
OTHER CONTACT INFORMATION:	Bob Hart Consulting 5126 W. Evans Creek Road Rogue River, Oregon 97537
DATE RECEIVED BY DAS:	November 20, 2006
DEADLINE FOR FINAL ACTION:[1]	May 13, 2008

I. SUMMARY OF CLAIM

The claimants, Delmer and Evelyn Wagner, seek compensation in the amount of $1.2 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 tax lots 201 and 202 into eight parcels, and to develop a dwelling on each resulting undeveloped parcel and to develop a dwelling on each tax lot 204 and 205.[2] The subject property is located at 36505 Ditch Creek Road, near Rogue River, in Jackson 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

[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 four contiguous tax lots. Tax lot 201 consists of 18.25 acres; tax lot 202 consists of 19 acres; tax lot 204 consists of 6.12 acres; and tax lot 205 consists of 6.6 acres.

by the Land Conservation and Development Commission (the Commission) or the department not apply to Delmer and Evelyn Wagner's division of tax lots 201 and 202 into eight parcels, and to their development of a dwelling on each resulting undeveloped parcel and to their development of a dwelling on each tax lot 204 and 205: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6, enacted or adopted after December 18, 1986.[3] These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on December 18, 1986. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 may not allow the claimants to use tax lots 201 and 202 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 June 21, 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, no written comments were received in response to the 15-day notice.

IV. TIMELINESS OF CLAIM

Requirement

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

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

2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

[3] In response to the draft staff report dated July 16, 2007, pursuant to OAR 125-145-0080, the claimants' land use consultant submitted a letter, dated July 30, 2007, requesting to amend the claim to change the claimants' intended use of the property. The claimants' also assert a continuous ownership of the subject property since 1972. The department has considered the comment and finds that the record before the department supports the department's initial determination of the claimant's date of acquisition.

Findings of Fact

This claim was submitted to DAS on November 20, 2006, for processing under OAR 125, division 145. The claim identifies ORS 215 and OAR 660, division 6, as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

The claimants, Delmer and Evelyn Wagner, first acquired tax lot 202 on November 10, 1972, as reflected by a warranty deed included with the claim, and first acquired tax lot 201 on November 16, 1972, as reflected by a deed card included with the claim. However, in October 1974, the claimants conveyed tax lots 201 and 202 to Lerco, Inc., as reflected by deed cards included with the claim. The claimants re-acquired tax lots 201 and 202 from Lerco, Inc., and acquired tax lots 204 and 205 on December 18, 1986, as reflected by warranty deeds provided by Jackson County's Planning and Development Services.[4] The Jackson County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Delmer and Evelyn Wagner, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C), as of December 18, 1986. Lerco, Inc. is a "family member," as defined by ORS 197.352(11)(A), as to tax lots 201 and 202 and acquired those tax lots in October 1974.[5]

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

[4] Lerco, Inc. is a foreign business corporation registered with the Oregon Secretary of State of which Delmer Wagner is the president and Evelyn Wagner is the secretary.

[5] 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 Lerco, Inc. are not considered family members under the definition of family member in ORS 197.352(11)(A).

property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide tax lot 201 and 202 into eight parcels, and to develop a dwelling on each resulting undeveloped parcel and to develop a dwelling on each tax lot 204 and 205. The claim indicates that current land use regulations prevent the desired use.

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimants' property is zoned Woodland Resource (WR) by Jackson County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimants' property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use.

Current land use regulations, including ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, generally prohibit the division of forest-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 generally establishes an 80-acre minimum size for the creation of new lots or parcels on forest-zoned land and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.705 to 215.755 establish standards for the creation of new parcels and dwellings allowed in forest zones.

OAR 660, division 6, became effective on September 1, 1982, to implement Goal 4 and establish standards for divisions and development of land zoned for forest use, and was amended on March 1, 1994, to implement ORS 215.705 to 215.755 and 215.780. OAR 660-006-0025 interprets the goal and statutory standard for uses allowed in forest zones. OAR 660-006-0026 interprets land division requirements in forest zones, and 660-006-0027 and 660-006-0029 interpret the standards for dwellings in forest zones.

The claimants' family acquired tax lots 201 and 202 in October 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.

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). The claimants' desired use includes subdivision of their land. If the claimants had sought to create that use when their

family acquired tax lots 201 and 202 in 1974, as a matter of law, the use would have been subject to the interim planning goals at ORS 215.515.

The "interim" land use goals were set forth in ORS 215.515(1)(a) to (j) (1973 edition) as follows: (a) "To preserve the quality of the air, water and land resources of the state," (b) "To conserve open space and protect natural and scenic resources," (c) "To provide for the recreational needs of citizens of the state and visitors," (d) "To conserve prime farm lands for the production of crops," (e) "To provide for the orderly and efficient transition from rural to urban land use," (f) "To protect life and property in areas subject to floods, landslides and other natural disasters," (g) "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation," (h) "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development," (i) "To diversify and improve the economy of the state" and (j) "To ensure that the development of properties within the state is commensurate with the character and the physical limitations of the land." ORS 215.515 (1973 edition).[6]

When the claimants acquired tax lots 204 and 205 on December 18, 1986, the claimants' property was subject to Jackson County's acknowledged comprehensive plan and WR zone.[7] At that time, the claimants' desired use of tax lots 204 and 205 would have been subject to compliance with Goal 4, and OAR 660, division 6, as implemented through the county's acknowledged comprehensive plan and WR zone.[8]

The claim does not establish whether or to what extent the claimants' desired division and development of tax lots 201 and 202 comply with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time the claimants' family acquired those tax lots in October 1974. The claim also does not establish whether or to what extent the claimants' desired development of tax lots 204 and 205 were allowed under the standards in effect when they acquired those tax lots on December 18, 1986.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established pursuant to Goal 4, ORS 215 and OAR 660, division 6, for lands zoned for forest use, were enacted or

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[6] Goal 4 replaced the interim goals with regard to forest resource land, and went into effect on January 25, 1975, "to conserve forest lands for forest uses" and required, "Lands suitable for forest uses shall be inventoried and designated as forest lands. Existing forest land uses shall be protected unless proposed changes are in conformance with the comprehensive plan." Those forest uses were defined as follows: "(1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock."

[7] Jackson County's WR zone was acknowledged by the Commission for compliance with Goal 4 on May 16, 1983.

[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, 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).

adopted after the claimants' family acquired tax lots 201 and 202 in 1974 and the claimants acquired tax lots 204 and 205 in 1986, and do not allow the claimants' desired division and development of the property. However, the claim does not establish whether or to what extent the claimants' desired use of tax lots 201 and 202 complies with the provisions of ORS 215, including the interim planning goals set forth at ORS 215.515 (1973 edition) in effect when the claimants' family acquired tax lots 201 and 202 in October 1974. The claim also does not establish whether or to what extent the claimants' desired use of tax lots 204 and 205 complies with the standards for development in Jackson County's acknowledged comprehensive plan and WR zone in effect when the claimants acquired tax lots 204 and 205 on December 18, 1986.

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 $1.2 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 Delmer and Evelyn Wagner, whose family member acquired tax lots 201 and 202 in October 1974, and who acquired tax lots 202 and 204 on December 18, 1986. Under ORS 197.352, the claimants are 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 the claimants' family acquired tax lots 201 and 202 and the claimants' acquired tax lots 204 and 205 restrict the claimants' desired use of the property. The claimants estimate that the effect of the land use regulations on the fair market value of the subject property is a reduction of $1.2 million.

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 they and their family 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 4, ORS 215 and OAR 660, division 6, which Jackson County has implemented through its current WR zone. With the exception of provisions of ORS 215, including the interim statewide planning goals, in effect when the claimants' family acquired tax lots 201 and 202 in October 1974, and with the exception of Goal 4 and OAR 660, division 6, in effect when the claimants acquired tax lots 204 and 205 on December 18, 1986, these state land use regulations were not in effect when the claimants' family and the claimants acquired the 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. It appears that the general statutory, goal and rule restrictions on residential division and development of the subject property are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after the claimants' family and the claimants acquired the property. Provisions of ORS 215, including interim statewide planning goals in effect when the claimants' family acquired tax lots 201 and 202 in 1974, and provisions of Goal 4 and OAR 660, division 6, in effect when the claimants acquired tax lots 204 and 205 in 1986, are exempt under ORS 197.352(3)(E) and will continue to apply to the 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 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 $1.2 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 property was allowed under the standards in effect when the claimants' family and the claimants 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 Delmer and Evelyn Wagner to use the subject property for a use permitted at the time they acquired the property on December 18, 1986.

When the claimants acquired tax lots 201 and 202 on December 18, 1986, the claimants' property was subject to Jackson County's acknowledged comprehensive plan and WR zone.[9] That zone required a 20-acre minimum lot size for the creation of new lots or parcels and allowed parcel area reductions. At that time, the claimants' desired use of tax lots 201 and 202 would have been subject to compliance with Goal 4, and OAR 660, division 6, as implemented through the county's acknowledged comprehensive plan and WR zone.[10]

The claim does not establish whether or to what extent the claimants' desired division and development of tax lots 201 and 202 were allowed under the standards in effect when they acquired those tax lots on December 18, 1986.

In addition to the applicable provisions of Goal 4 and OAR 660, division 6, in effect on December 18, 1986, 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.

The department also notes that ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-0027, -0029 and -0035, include fire protection standards for dwellings and structures in forest zones. ORS 197.352 (3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . ."

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[9] Jackson County's WR zone was acknowledged by the Commission for compliance with Goal 4 on May 16, 1983.

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

Accordingly, the siting standards for dwellings and structures in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

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 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 Delmer and Evelyn Wagner's division of tax lots 201 and 202 into eight parcels, and to their development of a dwelling on each resulting undeveloped parcel or to their development of a dwelling on each tax lot 204 and 205: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after December 18, 1986. 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 they acquired the property on December 18, 1986. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 may not allow the claimants to use tax lots 201 and 202 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 on December 18, 1986. On that date, the property was subject to compliance with Goal 4 and OAR 660, division 6, as implemented through Jackson County's acknowledged comprehensive plan and WR zone.

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 July 16, 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.