



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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October 26, 2007

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



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130915

Claimants: Paul Klindt, Dane Klindt, and Kristin Klindt

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. M130915
(BALLOT MEASURE 37) OF)	
Paul Klindt, CLAIMANT)	

Claimant: Paul Klindt (the Claimant)

Property: Township 1S, Range 9E, Section 1, Tax lots 100 and 101, Hood River County (the Property)

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

Claimant 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 Paul Klindt's partition of tax lot 100 into five 20-acre parcels and tax lot 101 into 280 quarter-acre parcels and one approximately 5-acre parcel and to his development of a dwelling on each resulting parcel: applicable provisions of Goals 3 and 5, ORS 215 and OAR 660, divisions 16, 23, and 33, enacted or adopted after he acquired each tax lot. These laws will not apply to Paul Klindt only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 101 on August 14, 1975, and tax lot 100 on December 28, 1979. The department acknowledges that the relief to which Paul Klindt is entitled under ORS 197.352 may not allow him to use the subject property in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to Paul Klindt to use the subject property for the use described in this report, subject to the standards in effect on August 14, 1975, for tax lot 101 and December 28, 1979, for tax lot 100. On those dates, the property was subject to applicable provisions of Goals 3 and 5 and ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Paul Klindt 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 Paul Klindt 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 Paul Klindt to use the subject property, it may be necessary for him 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 Paul Klindt 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 him.

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 26th day of October, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Carla Ploederer, Manager
DAS, Measure 37 Services Unit

Dated this 26th 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.”

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. M130915
(BALLOT MEASURE 37) OF)
Dane Klindt and Kristin Klindt, CLAIMANT)

Claimant: Dane Klindt and Kristin Klindt (the Claimant)

Property: Township 1S, Range 9E, Section 1, Tax lots 100 and 101
Hood River County (the property)

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

Claimant 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 Amended 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 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 chapter 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 chapter 125, division 145, and ORS chapter 293.

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:


Cora R. Parker, Acting Director
DLCD
Dated this 26th day of October, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Carla Ploederer, Manager
DAS, Measure 37 Services Unit
Dated this 26th day of October, 2007.

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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

October 26, 2007

STATE CLAIM NUMBER: M130915

NAMES OF CLAIMANTS: Paul Klindt
Dane Klindt
Kristin Klindt

MAILING ADDRESS: Paul Klindt
PO Box 390
Mt. Hood-Parkdale, Oregon 97041

Dane Klindt
215 E Scenic Drive
The Dalles, Oregon 97058

Kristin Klindt
PO Box 769
Nicasio, California 94946

PROPERTY IDENTIFICATION: Township 1S, Range 9E, Section 1
Tax lots 100 and 101
Hood River County

OTHER CONTACT INFORMATION: Steven B. Andersen
Cascade Planning Associates
PO Box 135
Mosier, Oregon 97040

DATE RECEIVED BY DAS: November 20, 2006

DEADLINE FOR FINAL ACTION:¹ May 13, 2008

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.

I. SUMMARY OF CLAIM

The claimants, Paul, Dane and Kristin Klindt, seek compensation in the amount of \$19,944,575 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 lot 100 into five 20-acre parcels and to divide tax lot 101 into 280 quarter-acre parcels and one approximately 5-acre parcel and to develop a dwelling on each resulting parcel.² The subject property is located at 5301 Baseline Drive and 5355 Lava Bed Drive, west of Parkdale, in Hood River 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 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 Paul Klindt's partition of tax lot 100 into five 20-acre parcels and partition of tax lot 101 into 280 quarter-acre parcels and one approximately 5-acre parcel and to his development of a dwelling on each resulting parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 16, 23, and 33, enacted or adopted after he acquired each tax lot. These laws will not apply to Paul Klindt only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 101 on August 14, 1975, and tax lot 100 on December 28, 1979. The department acknowledges that the relief to which Paul Klindt is entitled under ORS 197.352 may not allow him to use the subject property in the manner set forth in the claim.

The department has further determined that the claim is not valid as to Dane and Kristin Klindt because they 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 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, no written comments were received in response to the 15-day notice.

² The subject property includes two tax lots. Tax lot 100 is 94.76 acres and tax lot 101 is 76.58 acres.

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, 2007, for processing under OAR 125, division 145. The claim identifies ORS 197 and 215 through 243, OAR 660 and Hood River 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

Claimant Paul Klindt acquired tax lot 101 on August 14, 1975, as reflected by a deed included with the claim, and first acquired an interest in tax lot 100 on December 28, 1979, from his family member, Phyllis Klindt, as reflected by a deed of gift included with the claim. Phyllis Klindt acquired the subject property on March 10, 1964, as evidenced by a sales agreement included with the claim.

Claimants Dane and Kristin Klindt state in the claim that they acquired tax lot 100 on August 14, 1975, and now have an interest in the property as co-owners of a two-thirds interest in the subject property. However, according to the information provided in the claim, Dane and Kristin Klindt

acquired Phyllis Klindt's interest as vendor in a land sale contract, as evidenced by a personal representative's deed included with the claim.³ As contract vendors, Dane and Kristin Klindt do not have an ownership interest in tax lot 100 that is restricted by land use regulations. Dane and Kristin Klindt do not assert ownership of tax lot 101.

The Hood River County Assessor's Office confirms Paul Klindt's current ownership of the subject property. Claimants Dane and Kristin Klindt are not owners of the subject property.

Conclusions

Claimant Paul Klindt is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of August 14, 1975, for tax lot 101 and as of December 28, 1979, for tax lot 100. Phyllis Klindt is a "family member" of Paul Klindt as defined by ORS 197.352(11)(A) and acquired the subject property on March 10, 1964. Claimants Dane and Kristin Klindt have not established that they are "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 tax lot 100 into five 20-acre parcels and tax lot 101 into 280 quarter-acre parcels and one approximately 5-acre parcel and to develop a dwelling on each resulting parcel, and that current land use regulations prevent the desired use.⁴

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 claimant's property is zoned EFU by Hood River County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant's property is "agricultural land" as defined by Goal 3.⁵ 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.

³ A vendor's interest in a land sale contract is in the right to receive payment on the contract, which is not a property ownership right that can be restricted by land use regulations.

⁴ 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 claimants' property or do not restrict the claimants' desired use of the property with the effect of reducing its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' desired use of the subject property, based on the claimant's description of their desired use.

⁵ The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for the development of dwellings on existing or any proposed parcel on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994.⁶

Tax lot 101 is also subject to Hood River County's Stream Protection Overlay (SPO) zone, which was adopted on February 17, 2004, and acknowledged to implement Goal 5.⁷ Under Goal 5, as adopted and effective on January 25, 1975, local governments were required to inventory land and adopt programs to protect natural resources and to conserve scenic, historic and open space resources. Prior to the adoption of local government programs, the requirements of Goal 5 were directly applicable to individual properties through the land use application process. Specifically, Goal 5 required applicants to establish how the natural resources, scenic and historic areas and open space resources on individual properties would be protected through the proposed development. Under OAR 660, division 16, requirements and application procedures for complying with Goal 5 became effective on June 29, 1981. OAR 660, division 23, replaced division 16, and established additional procedures and requirements for complying with Goal 5, and became effective on September 1, 1996.

The Klindt family first acquired the subject property in 1964, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1964.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3 and 5, ORS 215 and OAR 660, divisions 16, 23, and 33, were all enacted or adopted after the Klindt family acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when the Klindt family acquired the property.

As explained in Section V.(1), Dane and Kristin Klindt 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

⁶ 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 under OAR 660, division 33, for EFU-zoned land.

⁷ Hood River County's SPO zone was acknowledged by the Commission for compliance with Goal 5 on December 30, 2004.

or the department restrict their use of the subject real property with the effect of reducing the fair market value of the property.

3. Effect of Regulations on Fair Market Value

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

Findings of Fact

The claim includes an estimate of \$19,944,575 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’ agent’s assessment of the subject property’s value included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are Paul Klindt, whose family member acquired the subject property in 1964, and Dane and Kristin Klindt. As explained in Section V.(1) of this report, Dane and Kristin Klindt 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, claimant Paul Klindt is 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 Klindt family acquired the subject property restrict Paul Klindt’s 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 \$19,944,575.

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 Klindt 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 Goals 3 and 5, ORS 215 and OAR 660, divisions 16, 23, and 33, which Hood River County has implemented through its current EFU and SPO zones. All of

these land use regulations were enacted or adopted after the Klindt 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 Klindt family acquired the property on March 10, 1964. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the Klindt 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, Dane and Kristin Klindt 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 this claim as to Dane and Kristin Klindt.

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 Dane and Kristin Klindt because they are not owners of the subject property. The department further finds laws enforced by the Commission or the department restrict Paul Klindt'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 \$19,944,575. 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 Paul Klindt's desired use of the subject property was allowed under the standards in effect when his 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 Paul Klindt to use the subject property for a use permitted at the time he acquired tax lot 101 on August 14, 1975, and tax lot 100 on December 28, 1979.

Paul Klindt acquired the subject property after the adoption of the statewide planning goals, but before the Commission acknowledged Hood River County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.⁸ Tax lot 100 was zoned EFU by Hood River County, which established a 20-acre minimum lot size for dwellings. The southwest corner of tax lot 101 was zoned Farm-1 (A-1) and the remainder was zoned Farm-2 (A-2) by Hood River County. The A-1 zone established a 5-acre minimum lot size for dwellings. The A-2 zone established a variable minimum lot size, dependent upon approval by the county's health department. However, because the Commission had not acknowledged the county's plan and land use regulations when the claimant acquired tax lots 100 and 101, the statewide planning goals, and Goals 3 and 5 in particular, applied directly to Paul Klindt's property when he acquired it.⁹

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, Paul Klindt's opportunity to divide the subject property when he acquired it in 1975 and 1979 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.

Under the Goal 3 standards in effect on August 14, 1975, and December 28, 1979, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition).

The claim does not establish whether or the extent to which Paul Klindt's desired division and development of tax lot 100 into 20-acre parcels and tax lot 101 into 280 quarter-acre parcels and one 5-acre parcel were allowed under the standards in effect when he acquired tax lot 101 on

⁸ Hood River County's comprehensive plan and land use regulations were acknowledged by the Commission for compliance with Goal 3 on January 11, 1985.

⁹ 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).

August 14, 1975, and tax lot 100 on December 28, 1979. It is particularly implausible that the division of tax lot 101 into quarter-acre parcels could be construed to satisfy the requirements for divisions and development in effect in 1975. The claim also does not establish the extent to which Goal 5 and OAR 660, divisions 16, and 23, restrictions or procedures implemented after the claimant acquired the property, restrict the claimant's desired development of the subject property.

In addition to the provisions of Goals 3 and 5 and ORS 215 in effect when Paul Klindt acquired the property, there may be other laws that continue to apply to his 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 Paul Klindt seeks 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 subject 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 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 before the department, Dane and Kristin Klindt 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. Therefore, the department recommends that this claim be denied as to Dane and Kristin Klindt.

The department otherwise recommends that Paul Klindt's 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 Paul Klindt's partition of tax lot 100 into five 20-acre parcels and tax lot 101 into 280 quarter-acre parcels and one approximately 5-acre parcel and to his development of a dwelling on each resulting parcel: applicable provisions of Goals 3 and 5, ORS 215 and OAR 660, divisions 16, 23, and 33, enacted or adopted after he acquired each tax lot. These laws will not apply to Paul Klindt only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 101 on August 14, 1975, and tax lot 100 on December 28, 1979. The department acknowledges that the relief to which Paul Klindt is entitled under ORS 197.352 may not allow him to use the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to Paul Klindt to use the subject property for the use described in this report, subject to the standards in effect on August

14, 1975, for tax lot 101 and December 28, 1979, for tax lot 100. On those dates, the property was subject to applicable provisions of Goals 3 and 5 and ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Paul Klindt 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 Paul Klindt 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 Paul Klindt to use the subject property, it may be necessary for him 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 Paul Klindt 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 him.

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 September 24, 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. Comments received have been taken into account by the department in the issuance of this final report.