



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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September 4, 2007

To: Interested Persons

From: Cora R. Parker, Acting Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130963

Claimant: Allen, Bonnie, and Orville Manuel, James O. Manuel Jr.

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. M130963
(BALLOT MEASURE 37) OF)
James O. Manuel Jr., CLAIMANT)

Claimant: James O. Manuel Jr. (the Claimant)

Property: Township 3S, Range 1E, Section 35, Tax lots 700 and 701
Clackamas 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 James Manuel Jr.'s division of the 28-acre subject property into 1-acre parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after he acquired each of the subject tax lots. These land use regulations will not apply to James Manuel Jr. 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 701 on April 16, 1971, and when he acquired tax lot 700 on May 15, 1975.
2. The action by the State of Oregon provides the state's authorization to James Manuel Jr. to use the subject property for the use described in this report, subject to the standards in effect on April 16, 1971, for tax lot 701, and on May 15, 1975, for tax lot 700. On May 15, 1975, tax lot 700 was subject to applicable provisions of Goal 3 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 James Manuel Jr. 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.

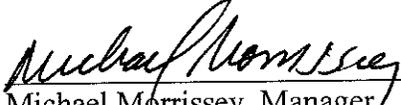
4. Any use of the subject property by James Manuel Jr. under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to 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 James Manuel Jr. 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 James Manuel Jr. 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 his use of the subject property

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

This Order is entered by the Manager for the Measure 37 Services Division 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 Director 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


Michael Morrissey, Manager
DLCD, Measure 37 Division
Dated this 4th day of September, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Carla Ploederer, Manager
DAS, Measure 37 Services Division
Dated this 4th day of September, 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. M130963
(BALLOT MEASURE 37) OF)
Allen Manuel, Bonnie Manuel and)
Orville Manuel, CLAIMANTS)

Claimants: Allen Manuel, Bonnie Manuel and Orville Manuel (the Claimants)

Property: Township 3S, Range 1E, Section 35, Tax lots 700 and 701
 Clackamas 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 denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

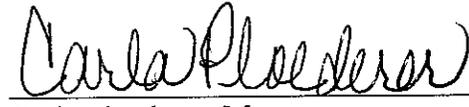
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Director for the State Services Division of the DAS as a final order of DAS under ORS 197.352,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

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:
Cora R. Parker, Acting Director



Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 4th day of September, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Carla Ploederer, Manager
DAS, Measure 37 Services Division
Dated this 4th day of September, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

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

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

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

September 4, 2007

STATE CLAIM NUMBER: M130963

NAMES OF CLAIMANTS: Allen Manuel
James O. Manuel Jr.
Bonnie Manuel
Orville Manuel

MAILING ADDRESSES: Allen Manuel
717 SE First Avenue
Canby, Oregon 97013

Bonnie Manuel, Orville Manuel and
James O. Manuel Jr.
PO Box 47
Canby, Oregon 97013

PROPERTY IDENTIFICATION: Township 3S, Range 1E, Section 35
Tax lots 700 and 701
Clackamas County

DATE RECEIVED BY DAS: November 20, 2006

DEADLINE FOR FINAL ACTION:¹ May 13, 2008

I. SUMMARY OF CLAIM

The claimants, Allen, Bonnie and Orville Manuel and James Manuel Jr., seek compensation in the amount of \$3,696,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 28-acre subject property² into one-acre parcels and to

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 two tax lots. Tax lot 700 consists of 18.22 acres, and tax lot 701 consists of 9.78 acres.

develop a dwelling on each parcel.³ The subject property is located at 23524 Mulino Road, in Clackamas 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 James Manuel Jr.'s division of the 28-acre subject property into 1-acre parcels and to his development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after he acquired each of the subject tax lots. These laws will not apply to James Manuel Jr. 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 701 on April 16, 1971, and when he acquired tax lot 700 on May 15, 1975.

The department has further determined that the claim is not valid as to Allen, Bonnie and Orville Manuel 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 5, 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 10-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

³ The claim also indicates that the claimants desire to sell or transfer the newly created parcels for development. In effect, the claimants request that a decision of the department to "not apply" (waive) certain laws as set forth in this report be transferable with the property. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. A determination of transferability is beyond the scope of relief that the department may grant under ORS 197.352. The Oregon Department of Justice has advised the department that "[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost."

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 Exclusive Farm Use (EFU) zoning 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 James Manuel Jr. acquired an interest in tax lot 701 on April 16, 1971, and acquired an interest in tax lot 700 on May 15, 1975, as reflected by a warranty deed and a quitclaim deed included with the claim.⁴ The Clackamas County Assessor’s Office confirms James Manuel Jr.’s current ownership of the subject property.⁵

Conclusions

Claimant James Manuel Jr. is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of April 16, 1971, for tax lot 701 and as of May 15, 1975, for tax lot 700. Claimants Allen, Bonnie and Orville Manuel are not “owners” of the subject property as that term is defined by ORS 197.352(11)(C).

⁴ The claimants assert in their claim that they all acquired the subject property on April 16, 1971. However, the contract of sale and purchase of real property included in the claim conveyed tax lot 700 to the claimants as a partnership doing business as Douglas Dahlia Gardens. Furthermore, claimants Allen, Bonnie and Orville Manuel conveyed all of their interest in tax lots 700 and 701 to claimant James Manuel Jr. on May 15, 1975, as reflected by a quitclaim deed included with the claim.

⁵ The department acknowledges receipt of the claimants’ correspondence dated July 17, 2007, relative to the department’s finding as to the claimants’ date of acquisition of the subject property. The department has considered the comment and finds that the record before the department supports the department’s initial determination of the claimants’ date of acquisition

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 the 28-acre subject property into 1-acre parcels and to develop a dwelling on each resulting undeveloped parcel, and that the property's current zoning prevents the desired use.

The claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land. The subject property is zoned EFU by Clackamas County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3.⁶ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels 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, 1994.⁷

Goal 14, which also became effective on January 25, 1975, would likely apply to the division of the subject property into parcels less than two acres. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses.

James Manuel Jr. acquired tax lot 701 on April 16, 1971, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. When James Manuel Jr.

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

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

acquired tax lot 701, it was zoned RA-1 by Clackamas County. The county's RA-1 zone required a minimum lot size of one acre and allowed single-family dwellings.

James Manuel Jr. acquired tax lot 700 on May 15, 1975, after the adoption of the statewide planning goals, but before the Commission acknowledged Clackamas County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.⁸ At that time, the property was also zoned RA-1 by Clackamas County. However, because the Commission had not acknowledged the county's plan and land use regulations when James Manuel Jr. acquired the subject property on May 15, 1975, the statewide planning goals, and Goal 3 in particular, applied directly to tax lot 700 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, James Manuel Jr.'s opportunity to divide tax lot 700 when he acquired it in 1975 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 May 15, 1975, 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 to what extent James Manuel Jr.'s desired division and development of tax lot 700 were allowed under the standards in effect when he acquired the property on May 15, 1975.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or

⁸ Clackamas County's comprehensive plan and land use regulations were acknowledged by the Commission for compliance with Goal 3 on December 31, 1981.

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).

adopted after James Manuel Jr. acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when James Manuel Jr. acquired it. However, the claim does not establish whether or the extent to which James Manuel Jr.'s desired use of tax lot 700 complies with the standards for land divisions and development under the requirements of Goal 3 and ORS 215 in effect when he acquired tax lot 700 on May 15, 1975.

As explained in Section V.(1) of this report Allen, Bonnie and Orville Manuel are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict their use of the subject property with the effect of reducing its fair market value

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 James Manuel Jr.'s use of the subject property, and that may continue to apply to his 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 James Manuel Jr. seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

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

Findings of Fact

The claim includes an estimate of \$3,696,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on the claimants' assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are James Manuel Jr. and Allen, Bonnie and Orville Manuel. James Manuel Jr. acquired tax lot 701 on April 16, 1971, and tax lot 700 on May 15, 1975. As explained in Section V.(1) of this report, Allen, Bonnie and Orville Manuel are not owners of the subject property. Therefore, no laws restrict Allen, Bonnie and Orville Manuel's use of the subject property with the effect of reducing the fair market value of the property. Under ORS 197.352, James Manuel Jr. is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since James Manuel Jr. acquired the subject property restrict his desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the property is a reduction of \$3,696,000.

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.

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 Clackamas County has implemented through its current EFU zone. With the exception of provisions of Goal 3 and ORS 215 in effect when James Manuel Jr. acquired tax lot 700 on May 15, 1975, these land use regulations were enacted or adopted after he 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. With the exception of provisions of Goal 3 and ORS 215 in effect in 1975 when James Manuel Jr. acquired tax lot 700, it appears that none of the general statutory, goal and rule restrictions on division and development of his property were in effect when he acquired the subject property. As a result, these laws are not exempt under ORS 197.352(3)(E) to the extent they were enacted or adopted after James Manuel Jr. acquired each of the subject tax lots. Provisions of Goal 3 and ORS 215 in effect when James Manuel Jr. acquired tax lot 700 are exempt and will continue to apply to each of the subject tax lots.

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

As explained in Section V.(1) of this report, Allen, Bonnie and Orville Manuel 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 Allen, Bonnie and Orville Manuel.

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 James Manuel Jr.'s use of the subject property.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced laws that restrict the use of the subject 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 subject 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, the department finds that laws enforced by the Commission or the department do not restrict Allen, Bonnie and Orville Manuel's desired use of the subject property because they are not owners of the subject property. The department further finds that laws enforced by the Commission or the department restrict James Manuel Jr.'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 \$3,696,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which James Manuel Jr.'s desired use of the subject property was allowed under the standards in effect when he 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 James Manuel Jr. to use the subject property for a use permitted at the time he acquired tax lot 701 on April 16, 1971, and at the time he acquired tax lot 700 on May 15, 1975.

Conclusions

Based on the record before the department, Allen, Bonnie and Orville Manuel 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 Allen, Bonnie and Orville Manuel.

The department otherwise recommends that the claim be approved as to James Manuel Jr., 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 James Manuel Jr.'s division of the 28-acre subject property into 1-acre parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after he acquired each of the subject tax lots. These land use regulations will not apply to James Manuel Jr. 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 701 on April 16, 1971, and when he acquired tax lot 700 on May 15, 1975.
2. The action by the State of Oregon provides the state's authorization to James Manuel Jr. to use the subject property for the use described in this report, subject to the standards in effect on April 16, 1971, for tax lot 701, and on May 15, 1975, for tax lot 700. On May 15, 1975, tax lot 700 was subject to applicable provisions of Goal 3 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 James Manuel Jr. 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 James Manuel Jr. 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 James Manuel Jr. 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 James Manuel Jr. 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 his use of the subject property
6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on July 9, 2007. OAR 125-145 0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of the final report.