



# 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 M131080*

*Claimants: Loring and D. Lorraine Olson*

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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. M131080  
(BALLOT MEASURE 37) OF )  
Loring and D. Lorraine Olson, CLAIMANTS )

Claimants: Loring and D. Lorraine Olson (the Claimants)

Property: Township 1S, Range 3E, Section 36A, Tax lots 1000, 1001 and 1002  
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 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 Loring and D. Lorraine Olson's division of the 9.73-acre subject property into one-acre parcels: applicable provisions of Goal 14 and OAR 660-004-0040, enacted or adopted after each claimant acquired the subject property. 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 the claimants acquired tax lot 1000, when D. Lorraine Olson acquired tax lot 1001 and when Loring Olson acquired tax lot 1002 on August 12, 1974, and when Loring Olson acquired tax lot 1001 and when D. Lorraine Olson acquired tax lot 1002 on January 19, 1994. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 may not allow Loring Olson to use tax lot 1001 and D. Lorraine Olson to use tax lot 1002 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 when the claimants acquired tax lot 1000, when D. Lorraine Olson acquired tax lot 1001 and when

Loring Olson acquired tax lot 1002 on August 12, 1974; and when Loring Olson acquired tax lot 1001 and D. Lorraine Olson acquired tax lot 1002 on January 19, 1994. On August 12, 1974, the property was subject to the standards in effect, including the provisions of ORS 215, and especially the interim planning goals set forth in ORS 215.515 (1973 edition). On January 19, 1994, the property was subject to the applicable provisions of Goal 14, as implemented by Clackamas County's acknowledged comprehensive plan, 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 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 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 4<sup>th</sup> day of September, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
Carla Ploederer, Manager  
DAS, Measure 37 Services Division  
Dated this 4<sup>th</sup> 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."

**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:** M131080

**NAMES OF CLAIMANTS:** Loring and D. Lorraine Olson

**MAILING ADDRESS:** 27487 SE Haley Road  
Boring, Oregon 97009

**PROPERTY IDENTIFICATION:** Township 1S, Range 3E, Section 36A  
Tax lots 1000, 1001 and 1002  
Clackamas County

**DATE RECEIVED BY DAS:** November 22, 2006

**DEADLINE FOR FINAL ACTION:<sup>1</sup>** May 15, 2008

**I. SUMMARY OF CLAIM**

The claimants, Loring and D. Lorraine Olson, seek compensation in the amount of \$1.26 million for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 9.73-acre subject property<sup>2</sup> into one-acre parcels.<sup>3</sup> The subject property is located on SE Haley Road, near Boring, 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. Department staff

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<sup>1</sup> 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.

<sup>2</sup> The subject property includes three tax lots. Tax lot 1000 consists of 5.77 acres and tax lots 1001 and 1002 each consist of 1.98 acres.

<sup>3</sup> 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."

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 Loring and D. Lorraine Olson's division of the 9.73-acre subject property into one-acre parcels: applicable provisions of Statewide Planning Goal 14 (Urbanization) and Oregon Administrative Rules (OAR) 660-004-0040, enacted or adopted after each claimant acquired the subject property. 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 the claimants acquired tax lot 1000, when D. Lorraine Olson acquired tax lot 1001 and Loring Olson acquired tax lot 1002 on August 12, 1974; and when Loring Olson acquired tax lot 1001 and D. Lorraine Olson acquired tax lot 1002 on January 19, 1994. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 may not allow Loring Olson to use tax lot 1001 and D. Lorraine Olson to use tax lot 1002 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 28, 2007, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, one written comment was received in response to the 15-day notice.

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

### **IV. TIMELINESS OF CLAIM**

#### **Requirement**

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

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

## **Findings of Fact**

This claim was submitted to DAS on November 22, 2006, for processing under OAR 125, division 145. The claim identifies Clackamas County 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**

The claimants, Loring and D. Lorraine Olson, acquired tax lot 1000 on August 12, 1974, as reflected by a warranty deed included with the claim. On July 23, 1976, tax lots 1001 and 1002 were created from tax lot 1000, and tax lot 1001 was conveyed to D. Lorraine Olson and tax lot 1002 was conveyed to Loring Olson, as reflected by bargain and sale deeds included with the claim. On January 19, 1994, the claimants transferred a one-half interest in tax lot 1000 to the D. Lorraine Olson Trust and a one-half interest in tax lot 1000 to the Loring W. Olson Trust, both revocable trusts with themselves as trustees, as reflected by a warranty deed included with the claim; and D. Lorraine Olson transferred an interest in tax lot 1001 to the D. Lorraine Olson Trust, and Loring Olson transferred an interest in tax lot 1002 to the Loring W. Olson Trust, as reflected by bargain and sale deeds included with the claim. The Clackamas County Assessor’s Office confirms the claimants’ current ownership of the subject property.

## **Conclusions**

The claimants, Loring and D. Lorraine Olson, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). The claimants have been owners of tax lot 1000, D. Lorraine Olson has been an owner of tax lot 1001 and Loring Olson has been an owner of tax lot 1002 since August 12, 1974. Loring Olson has been an owner of tax lot 1001 and D. Lorraine Olson has been an owner of tax lot 1002 since January 19, 1994. D. Lorraine Olson is a “family member” of Loring Olson for tax lot 1001 and Loring Olson is a “family member” of D. Lorraine Olson for tax lot 1002 as that term is defined by ORS 197.352(11)(A), since August 12, 1974.

## **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 9.73-acre subject property into one-acre parcels, and that the property's current zoning prevents the desired use.

The claim is based on the provisions of state law that regulate rural residential zoning. The claimants' property is zoned Rural Residential Farm/Forest 5-Acre (RRFF-5) by Clackamas County. The RRFF-5 zone is a rural residential zone, in accordance with Goal 14, which prohibits urban use of rural lands. The county's RRFF-5 zone requires five acres for the creation of any new lot or parcel and was in effect and applied to the subject property on or before October 4, 2000.

Goal 14 became effective on January 25, 1975, and requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and efficient transition from rural to urban land use. In 2000, as a result of a 1986 Oregon Supreme Court decision,<sup>4</sup> the Commission amended Goal 14 and adopted OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas), which was effective on October 4, 2000.

The rule states that if a county rural residential zone in effect on October 4, 2000, specifies a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size then in effect (OAR 660-004-0040(7)(c)).<sup>5</sup> Because Clackamas County's rural residential zone was in effect on October 4, 2000, and requires a minimum lot size of five acres, the minimum lot size for all new lots or parcels must equal or exceed five acres.

The claimants acquired tax lot 1000, D. Lorraine Olson acquired tax lot 1001 and Loring Olson acquired tax lot 1002 on August 12, 1974, after the adoption of Senate Bill 100 (Chapter 80, Oregon Laws 1973) effective on October 5, 1973, but before the adoption of the statewide planning goals, effective on January 25, 1975. At that time, the subject property was zoned by the county as RA-1, which required a one-acre minimum lot size and permitted dwellings as an outright use.

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);

<sup>4</sup> *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

<sup>5</sup> Some relief from this provision is available for lots or parcels having more than one permanent habitable dwelling pursuant to OAR 660-004-0040(7)(h). The rule also provides that a county's minimum lot size requirement in a rural residential zone shall not be amended to allow a smaller minimum lot size without approval of an exception to Goal 14 (OAR 660-004-0040(6)).

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 "Land 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 in 1974, as a matter of law, the use would have been subject to the interim planning goals at ORS 215.515.<sup>6</sup> Those goals include the following: "(e) To provide for the orderly and efficient transition from rural to urban land use . . . (h) To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development . . . (j) To ensure that the development of properties . . . is commensurate with the character and physical limitations of the land." The department notes that the language of interim goal (e) is the same as the text of Goal 14. As a result, the claimants' use of the subject property in 1974 was effectively subject to compliance with the substance of Goal 14.

The claim does not establish whether the claimants' desired division of the 9.73-acre subject property into one-acre parcels for residential development complies with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time the claimants acquired tax lot 1000, D. Lorraine Olson acquired tax lot 1001 and Loring Olson acquired tax lot 1002 in 1974.

## **Conclusions**

The minimum lot size requirements for rural residential lots or parcels established by Goal 14 and OAR 660-004-0040, adopted since the claimants acquired tax lot 1000, D. Lorraine Olson acquired tax lot 1001 and Loring Olson acquired tax lot 1002 in 1974, restrict the claimants' desired division of the property. However, the claim does not establish whether or to what extent the claimants' desired use of the subject property complies with the interim planning goals in effect when they acquired tax lot 1000, when D. Lorraine Olson acquired tax lot 1001 and when Loring Olson acquired tax lot 1002 on August 12, 1974.

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

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<sup>6</sup> The "interim" land use goals are set forth in ORS 215.515(1)(a) to (j) (1973 edition) as follows: (a) "To preserve the quality of the air, water and land resources of the state," (b) "To conserve open space and protect natural and 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).

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 \$1.26 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 a market analysis included with the claim.

#### **Conclusions**

As explained in Section V.(1) of this report, the claimants are Loring and D. Lorraine Olson. The claimants acquired tax lot 1000, D. Lorraine Olson acquired tax lot 1001 and Loring Olson acquired tax lot 1002 in 1974. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants acquired tax lot 1000, D. Lorraine Olson acquired tax lot 1001 and Loring Olson acquired tax lot 1002 restrict the claimants’ desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$1.26 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 the claimants acquired tax lot 1000, when D. Lorraine Olson acquired tax lot 1001 and when Loring Olson acquired tax lot 1002, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the claimants acquired tax lot 1000, D. Lorraine Olson acquired tax lot 1001 and Loring Olson acquired tax lot 1002.

### **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 Goal 14 and OAR 660-004-0040, which Clackamas County has implemented through its current RRFF-5 zone. Both of these land use regulations were adopted after the claimants

acquired tax lot 1000, D. Lorraine Olson acquired tax lot 1001 and Loring Olson acquired tax lot 1002.

### **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 goal and rule restrictions on residential division of the claimants' property were adopted after the claimants acquired tax lot 1000, D. Lorraine Olson acquired tax lot 1001 and Loring Olson acquired tax lot 1002, and for the most part, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimants acquired tax lot 1000, when D. Lorraine Olson acquired tax lot 1001 and when Loring Olson acquired tax lot 1002, including provisions of ORS 215 and specifically, the interim state planning goals at ORS 215.515 (1973 edition), are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, 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.

### **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 \$1.26 million. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when the claimants acquired tax lot 1000, D. Lorraine Olson acquired tax lot 1001 and Loring Olson acquired tax lot 1002. 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 the claimants to use tax lot 1000 for a use permitted at the time they acquired it on August 12, 1974; to allow D. Lorraine Olson to use tax lot 1001 and to allow Loring Olson to use tax lot 1002 for a use permitted at the time they acquired those tax lots on August 12, 1974; and to allow Loring Olson to use tax lot 1001 and to allow D. Lorraine Olson to use tax lot 1002 for a use permitted at the time they acquired those tax lots on January 19, 1994.

Loring Olson acquired tax lot 1001 and D. Lorraine Olson acquired tax lot 1002 on January 19, 1994. At that time, the property was subject to Clackamas County's acknowledged comprehensive plan and RRFF-5 zone. The RRFF-5 zone generally required five acres for the creation of a new lot or parcel. The claimants' desired residential development of the subject property at that time would have been subject to the provisions of the county's comprehensive plan and RRFF-5 zone, including the provision of Goal 14 implemented by those regulations.

In addition to the applicable provisions of Goal 14 in effect when Loring Olson acquired tax lot 1001 and when D. Lorraine Olson acquired tax lot 1002 on January 19, 1994, and other laws in effect when either of the claimants acquired the subject property in 1974 and 1994, there may be other laws that apply to the claimants' use of the property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use, and depending on when they were enacted or adopted, may continue to apply to the claimants' property. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D) and will continue to apply to the subject property on that basis.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in their claim, the 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 Loring and D. Lorraine Olson's division of the 9.73-acre subject property into one-acre parcels: applicable provisions of Goal 14 and OAR 660-004-0040, enacted or adopted after each claimant acquired the subject property. 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 the claimants acquired tax lot 1000, when D. Lorraine Olson acquired tax lot 1001 and when Loring Olson acquired tax lot 1002 on August 12, 1974, and when Loring Olson acquired tax lot 1001 and

when D. Lorraine Olson acquired tax lot 1002 on January 19, 1994. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 may not allow Loring Olson to use tax lot 1001 and D. Lorraine Olson to use tax lot 1002 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 when the claimants acquired tax lot 1000, when D. Lorraine Olson acquired tax lot 1001 and when Loring Olson acquired tax lot 1002 on August 12, 1974; and when Loring Olson acquired tax lot 1001 and D. Lorraine Olson acquired tax lot 1002 on January 19, 1994. On August 12, 1974, the property was subject to the standards in effect, including the provisions of ORS 215, and especially the interim planning goals set forth in ORS 215.515 (1973 edition). On January 19, 1994, the property was subject to the applicable provisions of Goal 14, as implemented by Clackamas County's acknowledged comprehensive plan, 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 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 August 3, 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.