



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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October 5, 2007

To: Claimant and Interested Persons

From: Cora R. Parker, Acting Director



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M131188*

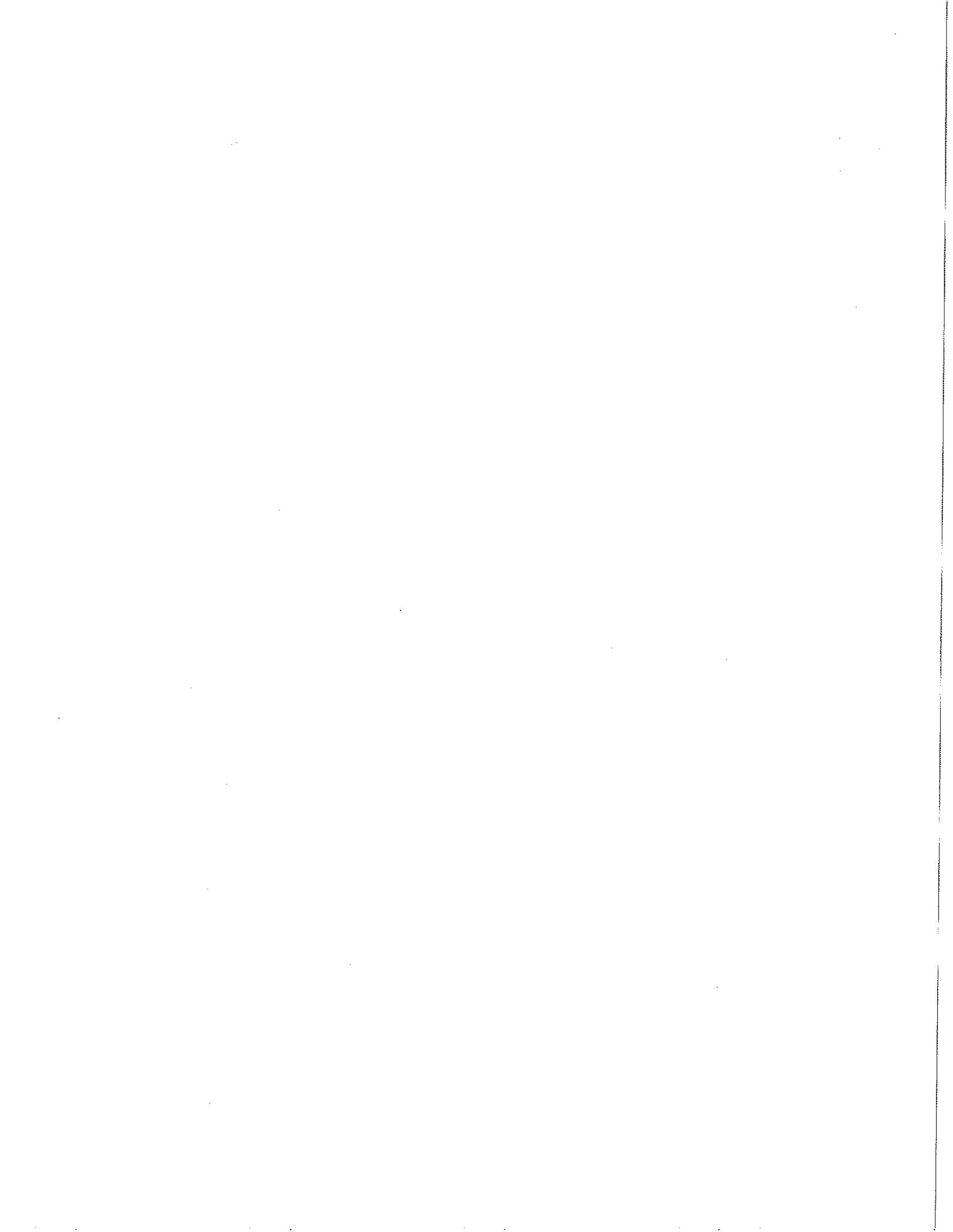
*Claimants: Reece and Marjorie Griffith*

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Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Department of Land Conservation and Development's Draft Staff Report and Recommendation.

This Draft Staff Report and Recommendation sets forth the department's evaluation of and recommendation on the claim. Oregon Administrative Rule 125-145-0100(3) provides that the claimant (or the claimant's agent) and any third parties who submitted comments on the claim may submit written comments, evidence, and information in response to any third-party comments contained in the report, and to the staff report and recommendation itself. Such response must be filed no more than 15 calendar days after the date of mailing of this report. Any response from you must be delivered to the Oregon Department of Administrative Services (DAS), 1225 Ferry Street SE, U160, Salem, Oregon 97301, and will be deemed timely filed if either postmarked on the 15th day or actually delivered to DAS by the close of business on the 15th day.

This department will review any responses submitted, and a Final Order on the claim will be issued after such review.



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

October 5, 2007

**STATE CLAIM NUMBER:** M131188

**NAMES OF CLAIMANTS:** Reece and Marjorie Griffith

**MAILING ADDRESS:** 47 36<sup>th</sup> Way  
Sacramento, California 95819

**PROPERTY IDENTIFICATION:** Township 27S, Range 5W:  
Section 23, tax lots 500 and 700  
Section 24C, tax lot 1000<sup>1</sup>  
Douglas County

**OTHER CONTACT INFORMATION:** Abigail Murphy  
122 Grassy Lane  
Roseburg, Oregon 97470

**OTHER INTEREST IN PROPERTY:** James and Bonnie Pynch,  
(Co-owners of tax lots 700 and 1000)

**DATE RECEIVED BY DAS:** November 24, 2006

**DEADLINE FOR FINAL ACTION:<sup>2</sup>** May 17, 2008

**I. SUMMARY OF CLAIM**

The claimants, Reece and Marjorie Griffith, seek compensation in the amount of \$2,950,000 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 develop a dwelling on tax lot 1000; and to divide tax lot 500 into ten approximately 4.65-acre parcels and tax lot 700 into three 20-acre parcels and one 60.77-acre parcel, and to develop a dwelling on

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<sup>1</sup> The subject property includes three tax lots totaling 195.79 acres. Tax lot 500 consists of 46.53 acres, tax lot 700 consists of 120.77 acres and tax lot 1000 consists of 28.49 acres.

<sup>2</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.

each resulting undeveloped parcel.<sup>3</sup> The subject property is located near Roseburg, in Douglas County. (See claim.)

## II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Reece and Marjorie Griffith's development of a dwelling on tax lot 1000; and to their division of tax lot 500 into ten approximately 4.65-acre parcels and tax lot 700 into three 20-acre parcels and one 60.77-acre parcel, and to their development of a dwelling on each resulting undeveloped parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6, and 33, enacted or adopted after the claimants acquired each tax lot. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired tax lots 700 and 1000 on January 3, 1973, and tax lot 500 on August 21, 1978. (See the complete recommendation in Section VI. of this report.)

## III. COMMENTS ON THE CLAIM

### Comments Received

On June 26, 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, sixteen written comments, evidence or information were received in response to the 15-day notice.

The comments do not address whether the claim meets the criteria for relief (compensation or waiver) under ORS 197.352. Comments concerning the effects a use of the subject 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 letters in the department's claim file.)

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<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."

## 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 24, 2006, for processing under OAR 125, division 145. The claim identifies Goals 3 and 4, ORS 215 and OAR 660 and Douglas County's Farm Forest (FF) and Farm Grazing (FG) 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, Reece and Marjorie Griffith, acquired tax lots 700 and 1000 on January 3, 1973, as reflected by a memorandum of contract and fulfillment warranty deed included with the claim, and they acquired tax lot 500 on August 21, 1978, as reflected by a warranty deed included with the claim.<sup>4</sup> The Douglas County Assessor's Office confirms the claimants' current ownership of the subject property.

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<sup>4</sup> The claimants assert they acquired tax lots 700 and 1000 on December 29, 1972. However, the memorandum of contract included with the claim was not fully executed until January 3, 1973.

## **Conclusions**

The claimants, Reece and Marjorie Griffith, are "owners" of the subject property as that term is defined by ORS 197.352(1)(C), as of January 3, 1973, for tax lots 700 and 1000, and as of August 21, 1978, for tax lot 500.

## **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 500 into ten approximately 4.65-acre parcels, divide tax lot 700 into three 20-acre parcels and one 60.77-acre parcel and to develop a dwelling on tax lot 1000 and on each resulting undeveloped parcel, and that current land use regulations prevent the desired use.

The claim is based generally on the applicable provisions of state law that require mixed farm-forest and Exclusive Farm Use (EFU) zoning and restrict uses on lands zoned mixed farm-forest-zoned and EFU.

Tax lots 500 and 700 are zoned FF by Douglas County. The county's FF zone is a mixed agricultural and forest land zone, in accordance with Goals 3 and 4, as implemented by OAR 660-006-0050. Goals 3 and 4 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned for farm uses and that forest lands under Goal 4 be zoned for forest uses. OAR 660-006-0050 authorizes local governing bodies to establish mixed agriculture-forest zones in accordance with both Goals 3 and 4 and OAR 660, divisions 6, and 33.

Under OAR 660-006-0050(2), effective on February 5, 1990, and subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993), uses allowed in EFU zones under Goal 3 and forest zones under Goal 4 are allowed in mixed agriculture-forest zones.

For land divisions, OAR 660-006-0055 requires local governing bodies to apply the standards of OAR 660-006-0026 and 660-033-0100, which implement the minimum lot size requirements in ORS 215.780. ORS 215.780(1) establishes an 80-acre minimum for the creation of new lots or parcels in EFU and forest zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993).

For the approval and siting of dwellings, under OAR 660-006-0050(2) and (3), counties must apply either the OAR 660, division 6, or 33, standards based on the predominant use of the tract on January 1, 1993.<sup>5</sup> The provisions of OAR 660-006-0027 and 660-006-0029 apply to dwelling

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<sup>5</sup> The claim does not include information regarding the predominant use of the property on January 1, 1993

approval and siting where the predominant use of the tract on that date was forest, and the provisions of OAR 660-033-0030 and 660-033-0035 apply where the predominant use of the tract on that date was agriculture.

Tax lot 1000 is zoned FG (Exclusive Farm Use – Grazing) by Douglas County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because tax lot 1000 is “agricultural land” as defined by Goal 3.<sup>6</sup> 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 215.284 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, establish standards for development of dwellings on existing or proposed parcels on EFU-zoned land.

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.<sup>7</sup>

The claimants acquired tax lots 700 and 1000 on January 3, 1973, prior to the adoption of statewide planning goals and their implementing statutes and regulations.

The claimants acquired tax lot 500 after the adoption of the statewide planning goals, but before the Commission acknowledged Douglas County’s land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.<sup>8</sup> At that time, tax lot 500 was zoned RR-2.5 by Douglas County. However, because the Commission had not acknowledged the county’s plan and land use regulations when the claimants acquired tax lot 500 on August 21, 1978, the applicable statewide planning goals, and Goals 3 and 4 in particular, would have applied directly to any development application for tax lot 500.<sup>9</sup>

As adopted in 1975, the Goal 3 standards for a division of land required that the created lots or parcels be of a size “appropriate for the continuation of the existing commercial agricultural enterprise within the area.” Further, ORS 215.263 (1975 edition) required that all land divisions

<sup>6</sup> The claimants’ property is “agricultural land” because it contains Natural Resources Conservation Service Class I-IV soils.

<sup>7</sup> 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.

<sup>8</sup> Douglas County’s EFU zone was acknowledged by the Commission for Compliance with Goal 3 on December 24, 1985. Douglas County’s forest zone was acknowledged by the Commission for compliance with Goal 4 on January 1, 1983.

<sup>9</sup> 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 land use 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 569 (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 directly applied 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); *Kenagy v. Benton County*, 115 Or App 131 (1992).

subject to EFU zoning under Goal 3 comply with the legislative intent in ORS 215.243 (Agricultural Land Use Policy). Thus, under Goal 3, the opportunity to divide tax lot 500 when the claimants acquired it on August 21, 1978, was limited to new lots or parcels that were (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area, and (2) shown to be consistent with the legislative intent in ORS 215. At that time, farm dwellings were allowed under Goal 3 if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1975 edition),<sup>10</sup> and non-farm dwellings were subject to ORS 215.213(3) (1975 edition).<sup>11</sup> Other uses were authorized and governed by the applicable provisions under Goal 3 and ORS 215.213.

As adopted in 1975, Goal 4 was intended to "conserve forest lands for forest uses" and required that lands suitable for forest uses "be inventoried and designated as forest lands" and that existing forest land uses "be protected unless proposed changes are in conformance with the comprehensive plan." Those forest uses were defined as: "(1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock." Specifically, Goal 4 only allowed land divisions that would protect commercial forest lands for commercial forest uses. Dwellings in forest zones could only be allowed if found to be "necessary and accessory" to one of the enumerated forest uses listed in Goal 4.<sup>12</sup>

The claim does not establish whether or to what extent the claimants' desired division and development of tax lot 500 were allowed under the standards in effect when they acquired that tax lot on August 21, 1978.

## Conclusions

The current zoning requirements, minimum lot size and dwelling standards established under Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, were for enacted or adopted after the claimants acquired the subject property in 1973 and 1978, and do not allow the desired division

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<sup>10</sup> Under ORS 215.213 (1975 edition), a farm dwelling could be established on agricultural land only if the farm use to which the dwelling related was in existence (*Newcomer v. Clackamas County*, 92 Or App 174, modified 94 Or App 33 (1988) and *Matteo v. Polk County*, 11 Or LUBA 259, 263 (1984), affirmed without opinion 70 Or App 179 (1984)). Guidance on the application of the statutory standards for farm and non-farm dwellings in EFU zones prior to the enactment of House Bill 3661 in 1993 can be found in the Commission rules (OAR 660, division 5, adopted on July 21, 1982, amended on June 7, 1986, and repealed on August 7, 1993).

<sup>11</sup> When determining whether land is "generally unsuitable for the production of farm crops and livestock" under ORS 215.213(3), the entire parcel or tract must be evaluated rather than a portion thereof. *Smith v. Clackamas County*, 313 Or 519 (1992).

<sup>12</sup> Goal 4 prohibited uses that were not enumerated by Goal 4 as permissible uses for forest lands as well as those that were not necessary and accessory to an enumerated forest use. *Lamb v. Lane County*, 7 Or LUBA 137 (1983). Dwellings in forest lands were required to be "necessary and accessory" to show that such dwellings complied with the Goal 4 requirement that local land use regulations must "conserve forest lands for forest uses." *1000 Friends v. LCDC (Curry County)*, 301 Or 447 (1986). A dwelling that may "enhance" forest uses is not "necessary and accessory" to a forest use to the extent required by Goal 4. *1000 Friends of Oregon v. LCDC (Lane County)*, 305 Or 384 (1988). For additional guidance, the Goal 4 provisions were interpreted under OAR 660, division 6, effective on September 1, 1982, in *1000 Friends of Oregon v. LCDC (Lane County)* and in *1000 Friends v. LCDC (Curry County)*.

and development of the property. These laws restrict the use of the subject property relative to the uses allowed when the claimants acquired the property. However, the claim does not establish whether or to what extent the claimants' desired use of tax lot 500 complies with the standards for land division and development under Goal 3 or 4 applicable and in effect when the claimants acquired tax lot 500 on August 21, 1978.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. There may be other laws that currently apply to the claimants' use of the subject property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

### **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, ORS 197.352(1) requires that the land use 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 \$2,950,000 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 a real estate agent's assessment of the value of the subject property.

#### **Conclusions**

As explained in Section V.(1) of this report, the claimants are Reece and Marjorie Griffith who acquired tax lots 700 and 1000 on January 3, 1973, and tax lot 500 on August 21, 1978. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants acquired the subject property restrict the claimants' desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$2,950,000.

Without an appraisal or other documentation and without verification of whether or the extent to which the claimants' use of the subject property was allowed under the standards in effect when they acquired the property, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

#### **4. Exemptions Under ORS 197.352(3)**

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

#### **Findings of Fact**

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Douglas County has implemented through its FF and FG zones. With the exception of provisions of Goals 3 and 4 and ORS 215 in effect when the claimants acquired tax lot 500 on August 21, 1978, these laws were not in effect when the claimants acquired the subject property.

#### **Conclusions**

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that, with the exception of provisions of Goals 3 and ORS and ORS 215 in effect when the claimants acquired tax lot 500 in 1978, none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimants acquired it. As a result, these laws are not exempt under ORS 197.352(3)(E). Provisions of Goals 3 and 4 and ORS 215 applicable and in effect when the claimants acquired tax lot 500 in 1978 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimants acquired the subject property are also exempt under ORS 197.352(3)(E) and will continue to apply to the claimants' use of the property. In addition, the department notes that ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-0027, -0029 and -0035, include fire protection standards for dwellings and structures in forest and mixed agriculture-forest zones. ORS 197.352 (3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . ." Accordingly, the siting standards for dwellings and structures in forest zones in ORS 215.730 and in forest and mixed agriculture-forest zones in OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to the claimants' 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 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. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

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.

## **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 \$2,950,000. 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 the claimants' desired use of the subject property was allowed under the standards in effect when they 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 Reece and Marjorie Griffith to use the subject property for a use permitted at the time they acquired tax lots 700 and 1000 on January 3, 1973, and at the time they acquired tax lot 500 on August 21, 1978.

### **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 Reece and Marjorie Griffith's development of a dwelling on tax lot 1000; and to their division of tax lot 500 into ten approximately 4.65-acre parcels and tax lot 700 into three 20-acre parcels and one 60.77-acre parcel, and to their development of a dwelling on each resulting undeveloped parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after the claimants acquired each tax lot. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted

when they acquired tax lots 700 and 1000 on January 3, 1973, and tax lot 500 on August 21, 1978.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the property for the use described in this report, subject to the standards in effect on January 3, 1973, for tax lots 700 and 1000, and on August 21, 1978, for tax lot 500. On August 21, 1978, tax lot 500 was subject to applicable provisions of Goal 3 or 4 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 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. NOTICE OF OPPORTUNITY TO COMMENT**

This staff report is not a final decision by the department and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides 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. Such response must be filed no more than 15 calendar days after the date this report is mailed to the claimants and any third parties. Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses must be delivered to the Oregon Department of Administrative Services (DAS), Measure 37 Unit, Risk Management-State Services Division, 1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 and will be deemed timely filed if either postmarked on the 15th day, or actually delivered to DAS by the close of business on the 15th day. Note: Please reference the claim number, claimant name and clearly

mark your comments as "Draft Staff Report comments." Comments must be submitted in writing only. Those comments submitted electronically or by facsimile will not be accepted.

