



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office Fax: (503) 378-5518

Third Floor/Measure 37 Fax: (503) 378-5318

Web Address: <http://www.oregon.gov/LCD>

October 11, 2007

To: Claimant and Interested Persons

From: Cora R. Parker, Acting Director



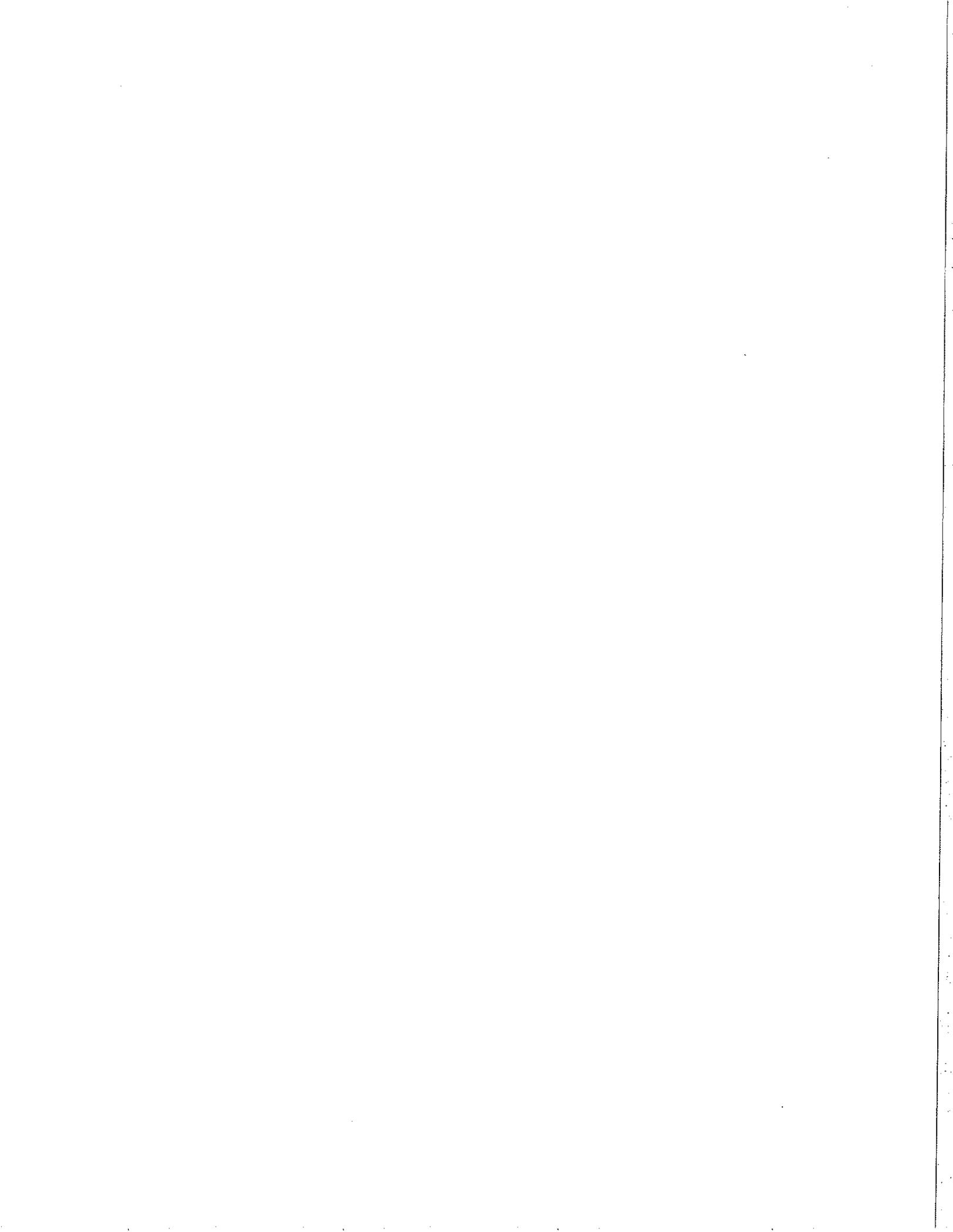
Re: Ballot Measure 37 (ORS 197.352) Claim Number M131438

Claimants: Robert J. and Frances K. Dryden

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 11, 2007

STATE CLAIM NUMBER: M131438

NAMES OF CLAIMANTS: Robert J. Dryden
Frances K. Dryden

MAILING ADDRESS: 2060 E Lincoln Road
Woodburn, Oregon 97071

PROPERTY IDENTIFICATION: Township 5S, Range 1W
Section 16: tax lot 1200
Section 16B: tax lots 300 and 400
Marion County

OTHER CONTACT INFORMATION: Wallace W. Lien, P.C.
1775 32nd Place NE, Suite A
Salem, Oregon 97301

DATE RECEIVED BY DAS: November 28, 2006

DEADLINE FOR FINAL ACTION:¹ May 21, 2008

I. SUMMARY OF CLAIM

The claimants, Robert and Frances Dryden, seek compensation in the amount of \$4,378,973 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 86.27-acre subject property into 15 parcels and to develop a dwelling on each resulting undeveloped parcel.² The subject property is located at 2060 E Lincoln Road, near Woodburn, in Marion County. (See claim.)

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 three tax lots. Tax lot 300 consists of 9.65 acres, tax lot 400 consists of 32.06 acres and tax lot 1200 consists of 44.56 acres.

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 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 Frances Dryden's division of tax lot 1200 into seven parcels and to her development of a dwelling on each resulting undeveloped parcel, and to Robert Dryden's division of tax lots 300 and 400 into eight parcels and to his development of a dwelling on each resulting undeveloped parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33. These laws will not apply to the claimants only to the extent necessary to allow Frances Dryden to use tax lot 1200 and to allow Robert Dryden to use tax lots 300 and 400 for the use described in this report, and only to the extent that use was permitted when Frances Dryden acquired tax lot 1200 on March 1, 1967, and when Robert Dryden acquired tax lots 300 and 400 on June 19, 1990. The department acknowledges that the relief to which Robert Dryden is entitled under ORS 197.352 may not allow him to use tax lots 300 and 400 in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

The department has further determined that this claim is not valid as to Frances Dryden for tax lots 300 and 400 and as to Robert Dryden for tax lot 1200 because the claimants are not owners of those tax lots. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On July 18, 2007, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, no written comments were received in response to the 15-day notice.

IV. TIMELINESS OF CLAIM

Requirement

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

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

Findings of Fact

This claim was submitted to DAS on November 28, 2006, for processing under OAR 125, division 145. The claim identifies provisions of Marion County zoning, ORS 197 and 215, OAR 660 and statewide planning goals and guidelines 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, Robert and Frances Dryden, acquired tax lot 1200 on March 1, 1967, as reflected by a land sale contract obtained by the department and a warranty deed included with the claim. On January 11, 2005, the claimants transferred tax lot 1200 to the Frances K. Dryden Revocable Living Trust, with Frances Dryden as trustee, as evidenced by a warranty deed included with the claim.

Claimant Robert Dryden acquired tax lots 300 and 400 from his parents, David and Mary Dryden, on June 19, 1990, as reflected by bargain and sale deeds included with the claim.³ David and Mary Dryden acquired tax lot 400 on November 22, 1923, and acquired tax lot 300 on June 9, 1943, as evidenced by warranty deeds included with the claim. On January 11, 2005, Robert Dryden transferred tax lots 300 and 400 to the Robert J. Dryden Revocable Living Trust, with himself as trustee, as reflected by a warranty deed included with the claim.⁴

The Marion County Assessor’s Office confirms Frances Dryden’s current ownership of tax lot 1200 and Robert Dryden’s current ownership of tax lots 300 and 400. Claimant Frances Dryden is not an owner of tax lots 300 and 400 and claimant Robert Dryden is not an owner of tax lot 1200.

³ Frances Dryden asserts an ownership interest in tax lots 300 and 400. However, the claimants did not include copies of any deeds or otherwise establish that Frances Dryden is an owner of tax lots 300 and 400.

⁴ Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

Conclusions

Claimant Frances Dryden is an "owner" of tax lot 1200 and claimant Robert Dryden is an "owner" of tax lots 300 and 400 as that term is defined by ORS 197.352(11)(C). Frances Dryden has been an owner of tax lot 1200 since March 1, 1967. Robert Dryden has been owner of tax lots 300 and 400 since June 19, 1990. David and Mary Dryden are "family members" of Robert Dryden as defined by ORS 197.352(11)(A) and acquired tax lot 400 on November 22, 1923, and tax lot 300 on June 9, 1943. Frances Dryden is not an "owner" of tax lots 300 and 400 and Robert Dryden is not an "owner" of tax lot 1200 as that term is defined in ORS 197.352(11)(C).

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants' use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the 86.27-acre subject property into 15 parcels and to develop a dwelling on each resulting undeveloped parcel, and that current land use regulations prevent the desired use.⁵

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimants' property is zoned EFU by Marion County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' 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.

⁵ The claimants summarily list numerous state land use laws as applicable to this claim, but do not establish how the laws either apply to the claimants' desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimants' property or do not restrict the claimants' desired use of the property with the effect of reducing its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' desired use of the subject property, based on the claimants' description of their desired use.

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

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

Robert Dryden's family acquired tax lot 400 in 1923 and tax lot 300 in 1943 and Frances Dryden acquired tax lot 1200 on March 1, 1967, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to tax lot 400 in 1923, tax lot 300 in 1943 or tax lot 1200 in 1967.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after Robert Dryden's family acquired tax lot 400 in 1923 and tax lot 300 in 1943 and after Frances Dryden acquired tax lot 1200 in 1967, and do not allow the claimants' desired division or development of the property. These laws restrict Robert Dryden's use of tax lots 300 and 400 and Frances Dryden's use of tax lot 1200 relative to the uses allowed when Robert Dryden's family acquired tax lots 300 and 400 and Frances Dryden acquired tax lot 1200.

As explained in Section V.(1), claimant Frances Dryden is not an "owner" of tax lots 300 and 400 and Robert Dryden is not an "owner" of tax lot 1200 as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict Frances Dryden's use of tax lots 300 and 400 or Robert Dryden's use of tax lot 1200 with the effect of reducing the fair market value of the property.

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."

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.

Findings of Fact

The claim includes an estimate of \$4,378,973 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 Robert Dryden whose family acquired tax lot 400 on November 22, 1923, and tax lot 300 on June 9, 1943, and Frances Dryden who acquired tax lot 1200 on March 1, 1967. As explained in Section V.(1) of this report, claimant Frances Dryden is not an "owner" of tax lots 300 and 400 and claimant Robert Dryden is not an "owner" of tax lot 1200 as that term is defined by ORS 197.352(11)(C). Therefore, no laws restrict Frances Dryden's use of tax lots 300 and 400 or Robert Dryden's use of tax lot 1200 with the effect of reducing the fair market value of the property.

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 Robert Dryden's family acquired tax lots 300 and 400 and since Frances Dryden acquired tax lot 1200 restrict the claimants' 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 \$4,378,973.

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 Marion County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after Robert Dryden's family acquired tax lots 300 and 400 and Frances Dryden acquired tax lot 1200.

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 none of the general statutory, goal and rule restrictions on division and development

of the subject property were in effect when Robert Dryden's family acquired tax lots 400 and 300 in 1923 and 1943 and Frances Dryden acquired tax lot 1200 in 1967. As a result, these laws are not exempt under ORS 197.352(3)(E). In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

As explained in Section V.(1) of this report, Frances Dryden is not an "owner" of tax lots 300 and 400 and Robert Dryden is not an "owner" of tax lot 1200 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 Frances Dryden with regard to tax lots 300 and 400 and Robert Dryden with regard to tax lot 1200.

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 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 record, the department finds that the claim is not valid as to Frances Dryden for tax lots 300 and 400 and as to Robert Dryden for tax lot 1200 because the claimants are not owners of those tax lots. The department further finds laws enforced by the Commission or the department restrict Frances Dryden's desired use of tax lot 1200 and Robert Dryden's desired use of tax lots 300 and 400. 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 \$4,378,973. 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 Frances Dryden's desired use of tax lot 1200 and Robert Dryden's desired use of tax lots 300 and 400 was allowed under the standards in effect when Robert Dryden's family acquired tax lots 300 and 400 and Frances Dryden acquired tax lot 1200. 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 Frances Dryden to use tax lot 1200 for a use permitted at the time she acquired the property on March 1, 1967, and to allow Robert Dryden to use tax lots 300 and 400 for a use permitted at the time he acquired the property on June 19, 1990.

At the time Robert Dryden acquired tax lots 300 and 400, the property was subject to Marion County's acknowledged comprehensive plan and EFU zone.⁸ At that time, Robert Dryden's desired use of tax lots 300 and 400 would have been subject to compliance with Goal 3, and OAR 660, division 5, as implemented through the county's acknowledged EFU zone, and the applicable provisions of ORS 215 then in effect.⁹ In 1990, ORS 215.263 (1989 edition) required that divisions of land in EFU zones be "appropriate for the continuation of the existing commercial agricultural enterprise within the area" or not smaller than the minimum size in the county's acknowledged plan. ORS 215.283(1)(f) (1989 edition) generally allowed farm dwellings "customarily provided in conjunction with farm use." Non-farm dwellings were allowed under ORS 215.283(3) if they were determined to be compatible with farm use, not interfere seriously with accepted farm practices, not materially alter the stability of the land use pattern in the area and be situated on generally unsuitable land for the production of farm crops and livestock.

The claim does not establish whether or to what extent Robert Dryden's desired use of tax lots 300 and 400 complies with the standards for land divisions and development in effect when Robert Dryden acquired those tax lots on June 19, 1990.

In addition to the applicable provisions of Goal 3, ORS 215 and OAR 660 in effect on June 19, 1990, when Robert Dryden acquired tax lots 300 and 400, and other laws in effect when either claimant acquired the subject property, there may be other laws that apply to the claimants' use of the property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use, and depending on when they were enacted or adopted, may continue to apply to the claimants' property. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D) and will continue to apply to the subject property on that basis.

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.

⁸ Marion County's EFU zone was acknowledged by the Commission for compliance with Goal 3 on June 10, 1982. That zone required parcels to be generally 40 acres or more if predominantly Class I soils; 60 acres or more if predominantly Class II or III soils; 80 acres or more if predominantly Class IV soils; and 100 acres if predominately Class V-VIII soils, and permitted dwellings in conjunction with farm use.

⁹ After the county's comprehensive plan and land use regulations were acknowledged by the Commission as complying with the statewide planning goals, the goals and implementing rules no longer applied directly to individual local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, 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).

Conclusions

Based on the record before the department, claimant Frances Dryden has not established that she is entitled to relief for tax lots 300 and 400 and Robert Dryden has not established that he is entitled to relief for tax lot 1200 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 those tax lots. Therefore, the department recommends that the claim as to Frances Dryden for tax lots 300 and 400 and as to Robert Dryden for tax lot 1200 be denied.

The department otherwise recommends that the claim be approved as to Frances Dryden for tax lot 1200 and as to Robert Dryden for tax lots 300 and 400, 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 Frances Dryden's division of tax lot 1200 into seven parcels and to her development of a dwelling on each resulting undeveloped parcel, and to Robert Dryden's division of tax lots 300 and 400 into eight parcels and to his development of a dwelling on each resulting undeveloped parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These laws will not apply to the claimants only to the extent necessary to allow Frances Dryden to use tax lot 1200 and to allow Robert Dryden to use tax lots 300 and 400 for the uses described in this report, and only to the extent that use was permitted when Frances Dryden acquired tax lot 1200 on March 1, 1967, and when Robert Dryden acquired tax lots 300 and 400 on June 19, 1990. The department acknowledges that the relief to which Robert Dryden is entitled under ORS 197.352 may not allow him to use tax lots 300 and 400 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 property for the use described in this report, subject to the standards in effect on March 1, 1967, as to Frances Dryden for tax lot 1200 and on June 19, 1990, as to Robert Dryden for tax lots 300 and 400. On June 19, 1990, tax lots 300 and 400 were subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Marion County's acknowledged EFU zone, and the applicable provisions 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.