

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. M118494
(BALLOT MEASURE 37) OF)	
Robert and Margaret Thurman, CLAIMANTS)	

Claimants: Robert and Margaret Thurman (the Claimants)

Property: Tax lot 700, Township 2S, Range 6E, Section 26AC
Tax lots 1001, 1100, 1101, 1102, 1201, 1300 Township 2S, Range 6E,
Section 26AD
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 the claimants' division of tax lots 700, 1201, 1300, 1100 and 1001 into one-acre parcels for residential development: Goal 14 and the applicable provisions of OAR 660-004-0040. These land use regulations will not apply to Mr. Thurman only to the extent necessary to allow him to use these tax lots for the use described in this report, and only to the extent that use was permitted when he acquired these tax lots on August 1, 1963 (1100, 1201 and 1300), November 24, 1972 (700) and November 28, 1972 (1001). These land use regulations will not apply to the Ms. Thurman only to the extent necessary to allow her to use tax lots 700, 1201 and 1300 for the use described in this report, and only to the extent that use was permitted when she acquired interest in these tax lots on August 18, 1976 (1201 and 1300) and May 30, 1980 (700).
2. The action by the State of Oregon provides the state's authorization to Robert Thurman to use tax lot 700, 1201, 1300, 1100 and 1001 for the use described in this report, subject to the standards in effect on August 1, 1963, for tax lots 1100, 1201 and 1300, on November 24, 1972, for tax lot 700 and on November 28, 1972, for tax lot 1001. The action by the State of Oregon provides the state's authorization to Margaret Thurman to use tax lot 700, 1201 and 1300 for the use described in this report, subject to the standards in effect on August 18, 1976, for tax

lots 1201 and 1300 and May 30, 1980, for tax lot 700. On those dates, the property was subject to the provisions of Goal 14, which generally required a minimum lot size of at least two acres.

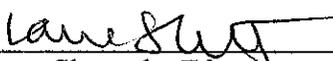
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first 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 property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in Condition 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.

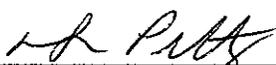
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under ORS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

FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD
Dated this 31st day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 31st day of March, 2006.

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 197.352¹, 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.”

¹ By order of the Marion County Circuit Court, “all time lines under Measure 37 [were] suspended indefinitely” on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

**BALLOT MEASURE 37 (ORS 197.352)
CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation**

March 31, 2006

STATE CLAIM NUMBER: M118494

NAMES OF CLAIMANTS: Robert and Margaret Thurman

MAILING ADDRESS: PO Box 65
Welches, Oregon 97067

PROPERTY IDENTIFICATION: Township 2S, Range 6E, Section 26AC
Tax lot 700

Township 2S, Range 6E, Section 26AD
Tax lots 1001, 1100, 1101, 1102, 1201, 1300
Clackamas County

DATE RECEIVED BY DAS: May 23, 2005

180-DAY DEADLINE: April 7, 2006¹

I. SUMMARY OF CLAIM

The claimants, Robert and Margaret Thurman, seek compensation in the amount of \$1,936,932 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 subject 18.84-acre property into one-acre parcels for residential development. The subject property is located at 61341 E. Cottonwood Road, 62020, 62080 and 61956 Cottonwood Road and 21212 E. Little River Road, Brightwood, in Clackamas County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid in part and invalid 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 Robert Thurman's division of tax lots 700, 1201, 1300, 1100 and 1001, which include 17.81 acres, into one-acre parcels for residential development: Statewide Planning Goal 14 (Urbanization) and the applicable provisions of Oregon Administrative Rules (OAR) 660-004-0040. These laws will not apply to Robert Thurman only to the extent necessary

¹ This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of 2005 Oregon Laws, Chapter 1 was suspended during the pendency of the appeal of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or __, 2006 Ore. Lexis 104 (February 21, 2006).

to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired tax lots 1201, 1300 and 1100 on August 1, 1963, tax lot 700 on November 24, 1972, and tax lot 1001 on November 28, 1972. (See the complete recommendation in Section VI of this report.)

Department staff also recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Commission or the department not apply to Margaret Thurman's division of the tax lots 700, 1201 and 1300, which include 12.01 acres of the subject 17.84-acre property, into one-acre parcels for residential development: applicable provisions of OAR 660-004-0040. These laws will not apply to Margaret Thurman only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that the use was permitted when she acquired tax lots 1201 and 1300 on August 18, 1976, and tax lot 700 on May 30, 1980. (See the complete recommendation in Section VI of this report.)

Neither the Commission nor department has enforced laws that restrict the claimants' use of tax lot 1102 (0.8 acres) and Ms. Thurman's use of tax lot 1101 (0.23 acres), in a manner that reduces the fair market value of these tax lots relative to how the subject property could have been used at the time the Thurman family acquired it in 1963.

III. COMMENTS ON THE CLAIM

Comments Received

On August 16, 2005, 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, 19 written comments were received in response to the 10-day notice.

Eighteen of the comments do not address whether the claim meets the criteria for relief under ORS 197.352 (2005 Oregon Laws, Chapter 1). 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 letters in the department's claim file.)

One comment is relevant to whether the restriction of the claimants' use of the subject property reduces the fair market value of the property. The comment has been considered by the department in preparing this report.

IV. TIMELINESS OF CLAIM

Requirement

1. For claims arising from land use regulations enacted prior to the effective date of 2005 Oregon Laws, Chapter 1 (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 2005 Oregon Laws, Chapter 1 (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 criterion, whichever is later.

Findings of Fact

This claim was submitted to DAS on May 23, 2005, for processing under OAR 125, division 145. The claim identifies Clackamas County’s Recreation Residential (RR) 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 2005 Oregon Laws, Chapter 1 (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

According to the information provided in the claim, the claimants, Robert and Margaret Thurman, acquired interest in the subject property as follows:

Tax Lot	Size of Tax Lot (Acres)	Date Family Acquired Interest in Tax Lot	Current Owner(s)	Date Current Owner(s) Acquired Interest in Tax Lot
2S 6E 26AC 700	5.01	Nov. 24, 1972 (Robert)	Robert and Margaret Thurman	Nov. 24, 1972 (Robert) ² May 30, 1980 (Margaret) ³
2S 6E 26AD 1102	0.80	Aug. 1, 1963 (Robert)	Robert and Margaret Thurman	Aug. 1, 1963 (Robert) ⁴ Aug. 18, 1976 (Margaret)
2S 6E 26AD 1101	0.23	Aug. 1, 1963 (Robert)	Margaret Thurman	Aug. 18, 1976 (Margaret)

² By contract, Clackamas County Deed Records, Recorded December 7, 1972.

³ By Deed Creating Estate by the Entirety, Clackamas County Deed Records 80 20896, Recorded June 6, 1980.

⁴ Included in the claim is a copy of a contract, recorded as Book 627, Page 459 in Clackamas County Deed Records. The claimants assert that Robert Thurman acquired the subject property on August 1, 1963, but that the poor quality of the contract provided in the claim precludes verification of that acquisition date. Pending receipt of documentation to establish this acquisition date, it appears Robert Thurman acquired the subject property on August 1, 1963.

Tax Lot	Size of Tax Lot (Acres)	Date Family Acquired Interest in Tax Lot	Current Owner(s)	Date Current Owner(s) Acquired Interest in Tax Lot
2S 6E 26AD 1201 2S 6E 26AD 1300	2.00 5.20	Aug. 1, 1963 (Robert)	Robert and Margaret Thurman	Aug. 1, 1963 (Robert) Aug. 18, 1976 (Margaret)
2S 6E 26AD 1100	5.20	Aug. 1, 1963 (Robert)	Robert Thurman	Aug. 1, 1963 (Robert)
2S 6E 26AD 1001	.40	Nov. 28, 1972 (Robert)	Robert Thurman	Nov. 28, 1972 (Robert)

The tax statements submitted with the claim establishes the claimants' current ownership.

Conclusions

The claimants, Robert and Margaret Thurman, are "owners" of the subject property as that term is defined by ORS 197.352(1)(C), as of August 1, 1963, November 24 and 28, 1972, August 18, 1976, and May 30, 1980.

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 "want to continue to develop the property as 1 acre building sites as we started in 1975." The claimants indicate they are prevented from doing this because OAR 660-004-0040(7)(a) (October 2000) "changed lot size from one acre to two acres." The claim also indicates that the Clackamas County Community Plan (December 31, 1976) "change[d] zoning on lot size from one acre to a 5 acre minimum."

The claim is based generally on Clackamas County's current Rural Residential Farm Forest (RRFF-5) zone and the applicable provisions of state law that require such zoning. The county's RRFF-5 zone is a rural residential zone as required by Goal 14, which generally requires that land outside of Urban Growth Boundaries be used for rural uses.

Goal 14 was effective 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,⁵ 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 the creation of a new lot or parcel smaller than two acres in a rural residential area

⁵ *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

is considered an urban use and provides that after October 4, 2000, an exception to Goal 14 is required to create a lot or parcel in a rural residential zone that is smaller than two acres or smaller than the county's minimum lot size standard if greater than two acres. Because Clackamas County's RRF-5 zone requires a minimum lot size of five acres, the subject property cannot be further divided as desired by the claimants without an exception to Goal 14.

The claimant, Robert Thurman, acquired the subject property in 1963 and 1972, prior to the adoption of the statewide planning goals and their implementing statutes and rules. The subject property was designated Recreation Residential (a rural residential zone) by the county in 1967, which applied a minimum parcel size of one acre. The claimant, Margaret Thurman, acquired interest in a portion of the subject property in 1976 and 1980, after adoption of the statewide planning goals, but before the Commission acknowledged Clackamas County's land use regulations to be in compliance with statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged Clackamas County's plan and land use regulations when the claimant, Margaret Thurman, acquired her interest in the subject property in 1976 and 1980, the statewide planning goals, including Goal 14, applied directly to the property when she acquired her interest.⁶

In 1982, the subject property was rezoned by the county to the current RRF-5 designation, which carries a minimum parcel size of five acres.

The provisions cited by the claimants regarding Goal 14 and OAR 660-004-0040 do not restrict the use of tax lot 1102 (0.8 acres) and tax lot 1101 (0.23 acres). These parcels are already smaller than the claimants' desired one-acre parcels and are zoned for residential uses. No information was provided to explain how these state laws may apply to these tax lots or why they restrict use.

Conclusions

The current minimum lot size requirements for rural residential lots or parcels established by Goal 14 and OAR 660-004-0040, adopted since Mr. Thurman acquired the property in 1963 and 1972, prohibit division of tax lots 700, 1201, 1300, 1100 and 1001 into smaller lots or parcels for residential development. These laws restrict use of the subject property relative to uses allowed when he acquired the property in 1963 and 1972. The minimum lot size requirements for rural residential parcels established by Goal 14 and OAR 660-004-0040, were adopted after Ms. Thurman acquired her interest in tax lots 700, 1201 and 1300 in 1976 and 1980 and do not allow further division of the property. When Ms. Thurman acquired her interest in the property in 1976 and 1980, the statewide planning goals, and in particular, the general requirements of

⁶ 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. *Foster v. Polk County*, 115 Or App 475 (1992); *Kenagy v. Benton County*, 115 Or App 131 (1992).

Goal 14, applied directly to the property. As interpreted by the Commission (OAR 660-004-0040), Goal 14 generally required a minimum lot size of at least two acres. The claim does not establish whether or to what extent the claimants' desired level of development would have been permitted under the laws in effect in 1976 and 1980 when Ms. Thurman acquired her interest in the subject property.

No information was provided in the claim to explain why Goal 14 and OAR 660-004-0040 restrict the use of tax lot 1102 (0.8 acres) and tax lot 1101 (0.23 acres). These parcels are already partitioned to the claimants' desired use to create one-acre parcels and are zoned for residential uses.

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 use 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 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 any land use regulation 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 \$1,936,932 as the reduction in the subject property's fair market value due to current regulations. This amount is based on the inability to divide and build an additional four homes on tax lot 700, and the inability to divide and build eight homes on tax lots 1102, 1101, 1201, 1300, 1100 and 1001. The claim states that these homes are valued at \$161,411 each for a total of \$1,936,932. The claimants calculated these totals based on the value of their house built in 1975 and the real market value listed in their tax statement.

Conclusions

As explained in Section V.1 of this report, the claimants are Robert and Margaret Thurman who acquired the property, or interest therein, on August 1, 1963, November 24 and 28, 1972, August 18, 1976, and May 30, 1980. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.2 of this report, laws adopted since the claimants acquired the subject property restrict the desired division and development of the property. The claimants estimate the reduction in value due to the restrictions to be \$1,936,932.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that the fair market value

of most 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 Goal 14 and OAR 660-004-0040, which Clackamas County has implemented through its Recreation Residential zone. Both of these land use regulations were adopted after Mr. Thurman acquired the property. With the exception of provisions of Goal 14 in effect when Ms. Thurman acquired her interest in the subject property on August 18, 1976, and May 30, 1980, these regulations were not in effect when the claimants acquired the property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that the general statutory, goal and rule restrictions on divisions of rural residential land were not in effect when Mr. Thurman acquired the subject property in 1963 and 1972 and, except for the provisions of Goal 14 in effect in 1976 and 1980, were not in effect when the Ms. Thurman acquired her interest in the property. As a result, these laws are exempt under ORS 197.352(3)(E) as to Mr. Thurman and exempt as to Ms. Thurman to the extent they were adopted after she acquired her interest in the subject property in 1976 and 1980. Provisions of Goal 14 in effect when Ms. Thurman acquired interest in tax lots 700, 1201 and 1300 in 1976 and 1980 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 exempt under ORS 197.352(3)(E), and will continue to apply to their use of the property. There may be other laws that 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 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 3(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 a law that restricts 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 current 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' ability to divide the subject property for residential use. The claim asserts that the laws enforced by the Commission or the department reduce the fair market value of the subject property by \$1,936,932. However, because the claim does not provide an appraisal or other specific documentation for how the specified restrictions reduce the fair market value of the subject property, and without verification of whether or the extent to which the claimants desired use of the property was permitted when Ms. Thurman acquired the property, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the most of the 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 Robert Thurman to use tax lots 700, 1201, 1300, 1100 and 1001 for a use permitted at the time he acquired these tax lots on August 1, 1963, and November 24 and 28, 1972, and to allow Margaret Thurman to use tax lots 700, 1201 and 1300 for a use permitted at the time she acquired an interest in these tax lots on August 18, 1976, and May 30, 1980.

Based on findings and conclusions set forth in this report, the claimants have not presented information to explain why Goal 14 and OAR 660-004-0040 restrict the use of tax lots 1102 and 1101. These parcels are already smaller than the claimants' stated intention to create one-acre parcels, and they are zoned for residential use.

Conclusions

Based on the record, the department recommends that the claim be denied as to tax lots 1102 and 1101 because no laws enforced by the Commission or department restrict the use of those tax lots; and recommends that the claim be approved as to the remaining tax lots, 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 the claimants' division of tax lots 700, 1201, 1300, 1100 and 1001 into one-acre parcels for residential development: Goal 14 and the applicable provisions of OAR 660-004-0040. These land use regulations will not apply to Mr. Thurman only to the extent necessary to allow

him to use these tax lots for the use described in this report, and only to the extent that use was permitted when he acquired these tax lots on August 1, 1963 (1100, 1201 and 1300), November 24, 1972 (700) and November 28, 1972 (1001). These land use regulations will not apply to the Ms. Thurman only to the extent necessary to allow her to use tax lots 700, 1201 and 1300 for the use described in this report, and only to the extent that use was permitted when she acquired interest in these tax lots on August 18, 1976 (1201 and 1300) and May 30, 1980 (700).

2. The action by the State of Oregon provides the state's authorization to Robert Thurman to use tax lot 700, 1201, 1300, 1100 and 1001 for the use described in this report, subject to the standards in effect on August 1, 1963, for tax lots 1100, 1201 and 1300, on November 24, 1972, for tax lot 700 and on November 28, 1972, for tax lot 1001. The action by the State of Oregon provides the state's authorization to Margaret Thurman to use tax lot 700, 1201 and 1300 for the use described in this report, subject to the standards in effect on August 18, 1976, for tax lots 1201 and 1300 and May 30, 1980, for tax lot 700. On those dates, the property was subject to the provisions of Goal 14, which generally required a minimum lot size of at least two acres.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 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 property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in Condition 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.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 14, 2006. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.