

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR) FINAL ORDER A
COMPENSATION UNDER ORS 197.352) CLAIM NO. M 118579
(BALLOT MEASURE 37) OF)
Myrnella H. Meyer and)
Far Hill Investments, LLC, CLAIMANTS)

Claimants: Myrnella H. Meyer and Far Hill Investments, LLC (the Claimants)

Property: Township 3S, Range 1W, Section 9, Tax lots 1901, 2000, 2002, 2003,
2004, 2005, 2006, 2007 and 2008, Clackamas County (the property)

Claim: The demand for compensation and any supporting information received
from the Claimants by the State of Oregon (the Claim).

Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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

FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:

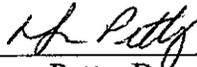
Lane Shetterly, Director



George Naughton, Deputy Director
DLCD

Dated this 18th day of April, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 18th day of April, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352¹, 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)

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.

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. M118579
(BALLOT MEASURE 37) OF)	
Myrnella H. Meyer and)	
Far Hill Investments, LLC, CLAIMANTS)	

Claimants: Myrnella H. Meyer and Far Hill Investments, LLC (the Claimants)

Property: Township 3S, Range 1W, Section 9, Tax lot 2001, 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 Myrnella Meyer's construction of a dwelling on the subject parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply to Myrnella Meyer 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 use was permitted when she acquired the property on May 1, 1970.
2. The action by the State of Oregon provides the state's authorization to Myrnella Meyer to use the subject property for the use described in this report, subject to the standards in effect on May 1, 1970. On that date, the property was zoned Rural Agricultural Residential--1 acre by Clackamas County.
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 Myrnella Meyer first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by Myrnella Meyer 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 Myrnella Meyer to use the subject property, it may be necessary for her 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 Myrnella Meyer 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 Myrnella Meyer.

This Order is entered by the Deputy 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:

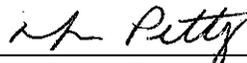
Lane Shetterly, Director



George Naughton, Deputy Director
DLCD

Dated this 18th day of April, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 18th day of April, 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.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

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

April 18, 2006

STATE CLAIM NUMBER: M118579
Report A

NAMES OF CLAIMANTS: Myrnella H. Meyer and
Far Hill Investments, LLC

MAILING ADDRESS: 27525 Baker Road
Sherwood, Oregon 97140

PROPERTY IDENTIFICATION: Township 3S, Range 1W, Section 9
Tax lots 1901, 2000, 2002, 2003, 2004,
2005, 2006, 2007 and 2008
Clackamas County

DATE RECEIVED BY DAS: June 9, 2005

180-DAY DEADLINE: April 24, 2006¹

I. SUMMARY OF CLAIM

The claimants, Myrnella H. Meyer and Far Hill Investments, LLC, seek compensation in the amount of \$2,535,000 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.² The claimants desire compensation or the right to develop a dwelling on each parcel of the subject property, which consists of nine tax lots (1901, 2000, 2002, 2003, 2004, 2005, 2006, 2007 and 2008). The subject property is located at 27525 Baker Road, near Sherwood, 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 not valid as to claimant Myrnella Meyer because she does not have a current ownership interest in the subject property. The department has also determined that the claim is not valid as to Far Hill Investments, LLC because no laws restrict Far Hill Investments' desired use of the subject property relative to the

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. DAS. MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

² Tax lot 2001 is also a part of claimants' claim. It is addressed in a companion Report B.

laws in effect when it acquired the property in 2000. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On July 19, 2005, pursuant to Oregon Administrative Rules (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, five written comments, evidence or information were received in response to the 10-day notice.

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

One of the comments is relevant to whether the restriction of the claimants' use of the subject property reduces the fair market value of the property and whether a state agency can waive state statutes. The comment has been considered by the department in preparing this report.

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 June 9, 2005, for processing under OAR 125, division 145. The claim identifies "rezoning" that has "prohibited utilization of property rights for residential construction" as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

Claimant Far Hill Investments, LLC acquired the subject property (tax lots 1901, 2000, 2002, 2003, 2004, 2005, 2006, 2007 and 2008) from claimant Myrnella Meyer on December 29, 2000, as reflected by several deeds included with the claim. The Clackamas County Assessor’s Office confirms that Far Hill Investments, LLC is the current owner of the subject tax lots.

Conclusions

Claimant Far Hill Investments, LLC is the “owner” of the subject tax lots as that term is defined by ORS 197.352(11)(C), as of December 29, 2000. Claimant Myrnella Meyer has no current ownership interest in the subject property.

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 develop each tax lot with a residential dwelling, and that the current zoning has prohibited the subject property’s utilization for residential construction.

The claim is based on Clackamas County’s current Exclusive Farm Use (EFU) zone and the applicable provisions of state law that require such zoning. The claimants’ property is zoned EFU as required by Statewide Planning Goal 3 (Agricultural Lands) in accordance with ORS 215 and OAR 660, division 33, because the claimants’ property is “agricultural land” as defined by

Goal 3.³ Goal 3 became effective on January 25, 1975, and required that “agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.283(1)(f) and 215.284 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, establish standards for the development of dwellings on existing or any proposed parcel on that 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. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which became effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.) In the Willamette Valley, non-farm dwellings can only be approved on existing lots or parcels predominantly composed of Natural Resources Conservation Service (NRCS) Class IV to VIII soils (ORS 215.284(1)) or 95 percent Class VI to VIII soils (ORS 215.284(4)).

At the time Far Hill Investments acquired the subject property in 2000, it was zoned EFU by Clackamas County and subject to the current dwelling standards under Goal 3, ORS 215 and OAR 660, division 33, and as described above.

Conclusions

The current zoning requirements and dwelling standards established by Goal 3 and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33, were all enacted or adopted before claimant Far Hill Investments, LLC acquired the subject property on December 29, 2000. These land use regulations do not allow the construction of farm or non-farm dwellings on the subject property. Laws enacted or adopted since Far Hill Investments, LLC acquired the subject property in 2000 do not restrict the desired use of the property relative to when Far Hill Investments, LLC acquired it in 2000.

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 \$2,535,000 as the reduction in the subject property’s fair market value due to current regulations. This estimate is based on an appraisal that compares the difference between the current value of the tax lots and their value if developed with dwellings.

³ The subject tax lots are “agricultural land” as defined by Goal 3 because they are predominately composed of NRCS Class I-IV soils.

Conclusions

As explained in Section V.(1) of this report, Far Hill Investments, LLC is the current owner of the subject property. It acquired the subject property on December 29, 2000. No state laws enacted or adopted since Far Hill Investments, LLC acquired the subject property restrict the use of the property relative to the uses allowed in 2000. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Commission or the department since Far Hill Investments, LLC acquired the property.

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 does not identify any state land use regulations enacted or adopted since Far Hill Investments, LLC acquired the subject property that restrict the use of the property relative to what would have been allowed when it acquired the property on December 29, 2000. As set forth in Section V.(2) of this report, the state land use regulations restricting Far Hill Investments' desired use of the subject property were in effect when it acquired the property in 2000.

Conclusions

All of the state land use regulations that restrict Far Hill Investments' desired use of the subject property were in effect when it acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when Far Hill Investments acquired 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 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 do not restrict Far Hill Investments, LLC's desired use of the subject property relative to what was permitted when it acquired the subject tax lots in 2000 and do not reduce the fair market value of the property. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E).

Based on the record, the department finds that the claim is not valid as to claimant Myrnella Meyer because she does not have an ownership interest in the subject property.

Conclusions

Based on the record and the foregoing findings and conclusions, the claimants have not established that they are entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. Therefore, this claim is denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 30, 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

**OREGON DEPARTMENT
Final Staff Report and Recommendation**

April 18, 2006

STATE CLAIM NUMBER: M118579
Report B

NAMES OF CLAIMANTS: Myrnella H. Meyer and
Far Hill Investments, LLC

MAILING ADDRESS: 27525 Baker Road
Sherwood, Oregon 97140

PROPERTY IDENTIFICATION: Township 3S, Range 1W, Section 9
Tax lot 2001
Clackamas County

DATE RECEIVED BY DAS: June 9, 2005

180-DAY DEADLINE: April 24, 2006¹

I. SUMMARY OF CLAIM

The claimants, Myrnella H. Meyer and Far Hill Investments, LLC, seek compensation in the amount of \$225,000 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 construct a dwelling on the subject property consisting of tax lot 2001. The subject property is located at 27525 Baker Road, near Sherwood, in Clackamas County. (See claim.)²

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 as to claimant Myrnella Meyer. Department staff has also determined that the claim is not valid as to claimant Far Hill Investments, LLC because it does not have an ownership interest in the subject property.

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. DAS*. *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

² The claim also seeks compensation or the right to develop a dwelling on tax lots 1901, 2000, 2002, 2003, 2004, 2005, 2006, 2007 and 2008. The claim regarding these tax lots is addressed in a companion Report A.

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 Myrnella Meyer's construction of a dwelling on the subject 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 Myrnella Meyer 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 use was permitted when she acquired the property on May 1, 1970. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On July 19, 2005, pursuant to Oregon Administrative Rules (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, five written comments, evidence or information were received in response to the 10-day notice.

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

One of the comments is relevant to whether the restriction of the claimants' use of the subject property reduces the fair market value of the property and whether a state agency can waive state statutes. The comment has been considered by the department in preparing this report.

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 June 9, 2005, for processing under OAR 125, division 145. The claim identifies “rezoning” that has “prohibited utilization of property rights for residential construction” 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

Myrnella H. Meyer acquired the subject property (tax lot 2001) on May 1, 1970, as reflected by a deed included with the claim. On March 27, 1989, Myrnella Meyer conveyed the subject tax lot to herself as trustee of the Myrnella H. Meyer Trust, a revocable trust.³ The Clackamas County Assessor’s Office confirms that Myrnella Meyer is the current owner of the tax lot 2001. Claimant Far Hill Investments, LLC is not an owner of the subject property.

Conclusions

Claimant Myrnella H. Meyer is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of May 1, 1970. Claimant Far Hill Investments, LLC is not an owner of the subject property.

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 develop the subject property with a residential dwelling, and that the current zoning has prohibited its utilization for residential construction.

³ Transfer of the property to a revocable trust does not result in a change in ownership for the purposes of ORS 197.352.

The claim is based generally on Clackamas County's current Exclusive Farm Use (EFU) zone and the applicable provisions of state law that require such zoning. The claimants' property is zoned EFU 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 3.⁴ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal 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.

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. The Commission subsequently adopted amendments to comply with House Bill 3326, (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Myrnella H. Meyer acquired the subject property on May 1, 1970, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. On that date, the property was zoned Rural Agricultural Residential-1 acre by Clackamas County.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after Myrnella Meyer acquired the subject property in 1970 and do not allow the desired division or residential development of the property. These laws restrict the use of the subject property relative to the uses allowed when she acquired 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 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 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 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."

⁴ The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

Findings of Fact

The claim includes an estimate of \$225,000 as the reduction in the subject property's fair market value due to current regulations. This estimate is based on an appraisal that compares the difference between the current value of the property and its value if developed with a dwelling.

Conclusions

As explained in Section V.(1) of this report, the current owner is Myrnella H. Meyer who acquired the subject property on May 1, 1970. Under ORS 197.352, Myrnella Meyer is 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 enacted or adopted since Myrnella Meyer acquired the subject property restrict the desired division and development of the property. Myrnella Meyer estimates the reduction in value due to the restrictions to be \$225,000.

Without further investigation and documentation, it is not possible to substantiate the specific dollar amount Myrnella Meyer demands for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not 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 Goal 3, ORS 215 and OAR 660, division 33, which Clackamas County has implemented through its current zone. All of these land use regulations were enacted or adopted after Myrnella Meyer 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 none of the general statutory, goal and rule restrictions on residential development were in effect when Myrnella Meyer acquired the subject property in 1970. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when Myrnella Meyer acquired the subject property are exempt under ORS 197.352(3)(E), and will continue to apply to her use of the property. There may be other laws that continue to apply to the Myrnella Meyer's use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a

use of subject property until there is a specific proposal for that use. When Myrnela Meyer seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

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. 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 the 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 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 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 claimant Myrnela Meyer's ability to develop a dwelling on the subject property. The claim asserts that the laws enforced by the Commission or the department reduce the fair market value of the subject property by \$225,000. Without further investigation and documentation establishing how the specified restrictions reduce the fair market value of the subject 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 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 Myrnela Meyer to use the subject property for a use permitted at the time she acquired the property on May 1, 1970.

Conclusions

Based on the record, the department recommends that the claim be denied as to claimant Far Hills Investments, LLC because it is not a current owner of the subject property and that the claim be approved as to claimant Myrnela Meyer, 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 Myrnela Meyer's construction of a dwelling on the subject parcel: applicable provisions

of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply to Myrnella Meyer 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 use was permitted when she acquired the property on May 1, 1970.

2. The action by the State of Oregon provides the state's authorization to Myrnella Meyer to use the subject property for the use described in this report, subject to the standards in effect on May 1, 1970. On that date, the property was zoned Rural Agricultural Residential-1acre by Clackamas County.

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 Myrnella Meyer first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by Myrnella Meyer 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 Myrnella Meyer to use the subject property, it may be necessary for her 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 Myrnella Meyer 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 Myrnella Meyer.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 30, 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.