

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

IN THE MATTER OF THE CLAIM FOR	)	FINAL ORDER
COMPENSATION UNDER ORS 197.352	)	CLAIM NO. M121429
(BALLOT MEASURE 37) OF	)	
Allan and Nell Adamson, CLAIMANTS	)	

Claimants: Allan and Nell Adamson (the Claimants)

Property: Township 3S, Range 4E, Section 25, Tax lot 1601, 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) and the Oregon Department of Forestry (the ODF Report), attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by the Oregon Department of Forestry or the Oregon Board of Forestry, for the reasons set forth in the ODF Report.

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 Allan Adamson's partition of the 9.89-acre property from 3S4E25 T/L 1600 and division of the property into eight 1-acre lots or to his development of a dwelling on each lot: applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 4, 6, and 33, enacted or adopted after December 31, 1975. These land use regulations will not apply to claimant Allan Adamson only to the extent necessary 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 the property on December 31, 1975. As specified above, on that date, the desired use was subject to ORS 92.016 and 92.025 (1975 edition), as well as the 1975 provisions of Goal 3 or 4 and Goal 14. If the use was subject to Goal 3, then ORS 215 (1975 edition) also will apply to Allan Adamson's use of the property.
2. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Nell Adamson's partition of the 9.89-acre property from 3S4E25 T/L 1600 and division

of the property into eight 1-acre lots or to her development of a dwelling on each parcel: applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 4, 6, and 33, enacted or adopted after August 5, 1998. These land use regulations will not apply to claimant Nell Adamson 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 an interest in the property on August 5, 1998. The department acknowledges that the relief granted to Nell Adamson may not allow the use described in the claim.

3. The action by the State of Oregon provides the state's authorization to claimant Allan Adamson to use the property for the use described in this report, subject to the standards in effect on December 31, 1975. On that date, the property was subject to applicable provisions of Goals 3, 4 and 14 and ORS 92 and 215 then in effect.

4. The action by the State of Oregon provides the state's authorization to claimant Nell Adamson to use the property for the use described in this report, subject to the standards in effect on August 5, 1998. At that time, the property was subject to applicable provisions of Goals 3, 4 and 14, ORS 92 and 215 and OAR 660, divisions 4, 6, and 33, currently in effect.

5. 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.

6. 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).

7. 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.

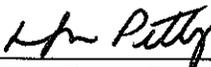
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under ORS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

This Order is entered by the Oregon Board and Department of Forestry as a final order of the Board under ORS 197.352, OAR 629-001-0057, and OAR Chapter 125, division 145.

FOR DLCD AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:

  
Lane Shetterly, Director  
DLCD  
Dated this 25<sup>th</sup> day of May, 2006.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
Dugan Petty, Deputy Administrator  
DAS, State Services Division  
Dated this 25<sup>th</sup> day of May, 2006.

FOR THE OREGON BOARD OF  
FORESTRY AND THE OREGON  
DEPARTMENT OF FORESTRY:

  
Marvin Brown, State Forester  
ODF  
Dated this 25<sup>th</sup> day of May, 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 197.352<sup>1</sup>, 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)

<sup>1</sup> 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.

**FOR INFORMATION ONLY**

The Oregon Department of Justice has advised the Department of Land Conservation and Development that “[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost.”

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

May 25, 2006

**STATE CLAIM NUMBER:** M121429

**NAMES OF CLAIMANTS:** Allan and Nell Adamson

**MAILING ADDRESS:** 38502 Southeast Coupland Road  
Estacada, Oregon 97023

**PROPERTY IDENTIFICATION:** Township 3S, Range 4E, Section 25  
Tax lot 1601  
Clackamas County

**OTHER CONTACT INFORMATION:** Mary W. Johnson  
500 Abernethy Road, Suite 4  
Oregon City, Oregon 97045

**DATE RECEIVED BY DAS:** July 15, 2005

**180-DAY DEADLINE:** May 30, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

The claimants, Allan and Nell Adamson, seek compensation in the amount of \$773,000 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 divide the 9.89-acre property into eight 1-acre parcels and to develop a dwelling on each parcel. The subject property is located at 38502 Southeast Coupland Road, near Estacada, in Clackamas County. (See claim.)

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff 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 Allan and Nell Adamson's partition of the 9.89-acre property from 3S4E25 T/L 1600, and to the division of the property into eight 1-acre lots and to their development of a

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<sup>1</sup> This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

dwelling on each lot: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands), 4 (Forest Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 4, 6, and 33. These laws will not apply to claimant Allan Adamson only to the extent necessary 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 the subject property in 1975. (See the complete recommendation in Section VI. of this report.)

These laws will not apply to claimant Nell Adamson 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 an interest in the subject property in 1998. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On August 5, 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, one written comment was received in response to the 10-day notice.

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

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

#### **Requirement**

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

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

#### **Findings of Fact**

This claim was submitted to DAS on July 15, 2005, for processing under OAR 125, division 145. The claim identifies Goal 4, OAR 660, ORS 92 and 197, provisions of ORS 215, 526 and

527.610, and current Clackamas County zoning as the basis for the claim.<sup>2</sup> 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 Allan Adamson acquired the subject property on December 31, 1975, as reflected by a warranty deed included with the claim. Claimant Nell Adamson, wife of Allan Adamson, acquired an interest in the subject property on August 5, 1998, as reflected by a warranty deed included with the claim. The claimants’ parents and parents-in-law acquired the subject property on April 21, 1945, as evidenced by a warranty deed included with the claim. A July 11, 2005, title report submitted with the claim establishes the claimants’ current ownership.

### **Conclusions**

Claimant Allan Adamson is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C) as of December 31, 1975. Claimant Nell Adamson is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C) as of August 5, 1998. The claimants’ parents are “family members” as defined by ORS 197.352(11)(A) and acquired the subject property on April 21, 1945.

### **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 states that the claimants desire to “partition [the property] from 3S4E25 T/L 1600 and divide into 8 residential lots with one acre minimum lot size.” The claim also indicates that the

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<sup>2</sup> This report addresses only those laws administered by the department. A separate report by the Oregon Department of Forestry addresses ORS 526 and 527.610.

claimants desire to develop a dwelling on each parcel. According to the claim, a land use regulation "restricts land division and residential development."

The claim is based generally on Clackamas County's AG/Forest (AG/F) District zone and the applicable provisions of state law that require such zoning. The claimants' property is zoned AG/F, which is a mixed agricultural and forest land zone adopted to comply with Goal 4 and the implementing provisions of OAR 660-006-0050 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.<sup>3</sup> Depending on the predominant use on January 1, 1993, the property is subject to either the requirements for dwellings applicable under Exclusive Farm Use (EFU) zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6. This includes the dwelling standards asserted by the claimants as restricting the use of the subject property.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the 80-acre minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Clackamas County's AG/F zone is 80 acres. The claimants' property cannot be divided into parcels smaller than 80 acres.

Goal 14 would likely apply to the division of the claimants' property into parcels of less than two acres in size. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses. Goal 14 became effective on January 25, 1975.

ORS 92.016 and 92.025 prohibit the sale of a lot or parcel unless the city or county with jurisdiction has first approved a subdivision or partition creating the lot or parcel. The prohibition on sale of a lot without approval was in effect when the claimants' family acquired the property in 1945. However, it is unclear whether Clackamas County or a city regulated subdivisions in this area at that time.

The claimants' family first acquired the subject property in 1945, prior to the adoption of most land use statutes and the statewide planning goals and their implementing rules. No county zoning applied to the subject property in 1945.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established under Goals 3, 4, and 14 for lands zoned for mixed farm-forest use and the statutory and rule restrictions under applicable provisions of ORS 215 and OAR 660, divisions 4, 6, and 33, were enacted or adopted after the claimants' family acquired the subject property in 1945. The prohibition on the sale of a parcel prior to approval of a partition was also enacted after the

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<sup>3</sup> No information was provided to the department regarding the predominant use of the property on January 1, 1993.

claimants' family acquired the subject property in 1945. These laws restrict the use of the property relative to the uses allowed when the claimants' family acquired the property.

### **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 \$773,000 as the reduction in the subject property's fair market value due to current regulations. This amount is based on a real estate analysis of the value of the property divided into eight parcels and an appraisal of the current fair market value of the property. The information submitted with the claim does not directly address the amount by which the land use regulations identified in Section V.(2) have reduced the fair market value of the property. However, the information provides some evidence that the regulations have had such an effect, and there is no evidence to the contrary in the record for this claim.

#### **Conclusions**

As explained in Section V.(1) of this report, the claimants are Allan and Nell Adamson whose family members acquired the subject property on April 21, 1945. 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 enacted or adopted since the claimants' family 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 \$773,000 based on an appraisal of the current fair market value of the property and an estimate of the fair market value of the property if the identified land use regulations did not apply to the claimants' use.

Without an appraisal of the amount by which the identified land use regulations have reduced the fair market value of the property, 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 the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the claimants' family 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 is based on state land use regulations that restrict the use of the subject property relative to the uses permitted when the claimants' family acquired the property, including applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 4, 6, and 33, which

Clackamas County has implemented through its AG/F zone. All of these land use regulations were enacted or adopted after the claimants' family acquired the subject property.

The department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. The provisions include fire protection standards for dwellings and for surrounding forest zones. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . ." To the extent they are applicable to the claimants' property, siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3).

In 1945, ORS 92 prohibited the sale or creation of lots, except by prior approval of a subdivision by the county. As a result, these laws are exempt under ORS 197.352(3)(E).

### **Conclusions**

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimants' family acquired the property on April 21, 1945. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimants' family acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. 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.

## **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 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 restrict the claimants' ability to partition the 9.89-acre property from 3S4E25 T/L 1600 and divide the property into eight residential lots with a 1-acre minimum lot size and to develop a dwelling on each parcel. The claim asserts that the laws enforced by the Commission or the department reduce the fair market value of the subject property by \$773,000. However, because the claim does not provide an appraisal of the amount by which the identified land use regulations 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 and the fact that there is no evidence to the contrary, the department determines that the land use regulations identified in this report have reduced the fair market value of the subject property to some extent.

Claimant Allan Adamson acquired the subject property on December 31, 1975, after the adoption of the statewide planning goals, but before the Commission acknowledged Clackamas County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.<sup>4</sup>

Because the Commission had not acknowledged the county's plan and land use regulations when claimant Allan Adamson acquired the subject property on December 31, 1975, the applicable statewide planning goals would have applied directly to any development application for the property.<sup>5</sup> ORS 92.016 and 92.025 also would have applied to the partition of the property from tax lot 1600.

As adopted in 1975, Goal 3 required that agricultural lands be preserved and zoned for EFU pursuant to ORS 215. Goal 4, as adopted in 1975, required that forest lands be designated for forest uses. Depending on whether the subject property would have been subject to Goal 3 or 4 when acquired, it would have been subject to state standards for land divisions and dwellings under one or the other Goal and (if Goal 3) standards in ORS 215.

If subject to Goal 3, the state standards for a division of land required that the created lots or parcels be of a size "appropriate for the continuation of the existing commercial agricultural enterprise within the area." (See Goal 3.) Further, ORS 215.263 (1975 edition) required that all land divisions subject to EFU zoning comply with the legislative intent in ORS 215.243 (Agricultural Land Use Policy). Thus, under Goal 3, the opportunity to divide the subject property when acquired by the claimant on December 31, 1975, was limited to new lots or parcels that were (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area, and (2) shown to be consistent with the legislative intent in ORS 215. At that time, under Goal 3, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1975 edition),<sup>6</sup> and non-farm

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<sup>4</sup> Clackamas County's Comprehensive Plan was acknowledged on August 10, 1989.

<sup>5</sup> The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of each county's land use regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 569 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979) and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer directly applied to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992); *Kenagy v. Benton County*, 115 Or App 131 (1992).

<sup>6</sup> Under ORS 215.213, a farm dwelling could be established on agricultural land only if the farm use to which the dwelling relates exists (*Newcomer v. Clackamas County*, 92 Or App 174, modified 94 Or App 33 (1988) and *Matteo v. Polk County*, 11 Or LUBA 259, 263 (1984), affirmed without opinion 70 Or App 179 (1984)). Guidance on the application of the statutory standards for farm and non-farm dwellings in EFU zones can be found in the Commission rules (OAR 660, division 5, adopted July 21, 1982, amended June 7, 1986, and repealed August 7, 1993).

dwellings were subject to ORS 215.213(3) (1975 edition).<sup>7</sup> Other uses were authorized and governed by the applicable provisions under Goal 3 and ORS 215.213.

If subject to Goal 4, the state standards required uses to “conserve forest lands for forest uses.” Specifically, Goal 4 only allowed land divisions that would protect commercial forest lands for commercial forest uses. Dwellings in forest zones could only be allowed if found to be “necessary and accessory” to one of the enumerated forest uses listed in Goal 4.<sup>8</sup>

Goal 14 was effective on January 25, 1975, and requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and efficient transition from rural to urban land use. In 2000, as a result of a 1986 Oregon Supreme Court decision,<sup>9</sup> the Commission amended Goal 14 and adopted OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas), which was effective on October 4, 2000. The rule states that the creation of a new lot or parcel smaller than two acres in a rural residential area is considered an urban use and provides that after October 4, 2000, an exception to 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. The rule does not apply to lands planned and zoned for farm or forest uses. ORS 92.016 and 92.025, prohibiting the creation of a parcel except by prior approval of the county, were in effect when the claimant Allan Adamson acquired the property in 1975, and when claimant Nell Adamson acquired an interest in the property in 1998.

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 claimant Allan Adamson to use the subject property for a use permitted at the time he acquired the subject property in 1975.

At the time claimant Nell Adamson acquired an interest in the subject property, it was zoned mixed agriculture and forest by Clackamas County and subject to the current lot size and dwelling standards under Goals 3, 4 and 14, ORS 92 and 215 and OAR 660, division 4, 6, and 33, and as described in Section V.(2) of this report.

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 claimant Nell Adamson to use the subject property for a use permitted at the time she acquired an interest in the subject property in 1998.

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<sup>7</sup> When determining whether land is “generally unsuitable for the production of farm crops and livestock” under ORS 215.213(3), the entire parcel or tract must be evaluated rather than a portion thereof. *Smith v. Clackamas County*, 313 Or 519 (1992).

<sup>8</sup> Goal 4 prohibited uses that were not enumerated by Goal 4 as permissible uses for forest lands as well as those that were not necessary and accessory to an enumerated forest use. *Lamb v. Lane County*, 7 Or LUBA 137 (1983). Dwellings in forest lands were required to be “necessary and accessory” to show that such dwellings complied with the Goal 4 requirement that local land use regulations must “conserve forest lands for forest uses.” *1000 Friends v. LCDC (Curry County)*, 301 Or 447 (1986). A dwelling that may “enhance” forest uses is not “necessary and accessory” to a forest use to the extent required by Goal 4. *1000 Friends of Oregon v. LCDC (Lane County)*, 305 Or 384 (1988). For additional guidance, the Goal 4 provisions were interpreted under OAR 660, division 6, effective September 1, 1982, in *1000 Friends of Oregon v. LCDC (Lane County)* and in *1000 Friends v. LCDC (Curry County)*.

<sup>9</sup> *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

In addition to the applicable provisions of Goals 3 and 4 and ORS 215 in effect on December 31, 1975, and August 5, 1998, when Allan and Nell Adamson acquired the subject property, respectively, there may be other laws that apply to the claimants' use of the property that have not been identified in the claim or in this report. 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. 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.

### **Conclusions**

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Allan Adamson's partition of the 9.89-acre property from 3S4E25 T/L 1600 and division of the property into eight 1-acre lots or to his development of a dwelling on each lot: applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 4, 6, and 33, enacted or adopted after December 31, 1975. These land use regulations will not apply to claimant Allan Adamson only to the extent necessary 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 the property on December 31, 1975. As specified above, on that date, the desired use was subject to ORS 92.016 and 92.025 (1975 edition), as well as the 1975 provisions of Goal 3 or 4 and Goal 14. If the use was subject to Goal 3, then ORS 215 (1975 edition) also will apply to Allan Adamson's use of the property.
2. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Nell Adamson's partition of the 9.89-acre property from 3S4E25 T/L 1600 and division of the property into eight 1-acre lots or to her development of a dwelling on each parcel: applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 4, 6, and 33, enacted or adopted after August 5, 1998. These land use regulations will not apply to claimant Nell Adamson 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 an interest in the property on August 5, 1998. The department acknowledges that the relief granted to Nell Adamson may not allow the use described in the claim.

3. The action by the State of Oregon provides the state's authorization to claimant Allan Adamson to use the property for the use described in this report, subject to the standards in effect on December 31, 1975. On that date, the property was subject to applicable provisions of Goals 3, 4 and 14 and ORS 92 and 215 then in effect.

4. The action by the State of Oregon provides the state's authorization to claimant Nell Adamson to use the property for the use described in this report, subject to the standards in effect on August 5, 1998. At that time, the property was subject to applicable provisions of Goals 3, 4 and 14, ORS 92 and 215 and OAR 660, divisions 4, 6, and 33, currently in effect.

5. 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.

6. 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).

7. 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 May 9, 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 OF FORESTRY**

**Final Staff Report and Recommendation**

May 25, 2006

**STATE CLAIM NUMBER:** M121429

**NAMES OF CLAIMANTS:** Allan and Nell Adamson

**MAILING ADDRESS:** 38502 SE Coupland Road  
Estacada, OR 97023

**PROPERTY IDENTIFICATION:** Township 3S, Range 4E, Section 25  
Tax lot 1601  
Clackamas County

**OTHER CONTACT INFORMATION:** Mary W. Johnson, Attorney  
500 Abernethy Road, Ste. 4  
Oregon City, OR 97045

**DATE RECEIVED BY DAS:** July 15, 2005

**180-DAY DEADLINE:** May 30, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

See Department of Land Conservation and Development (DLCD) Final Staff Report.

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the findings and conclusions set forth below, the Department of Forestry (ODF) has determined the claim is not valid as to land use regulations administered by ODF or the Oregon Board of Forestry (Board) because none of the laws identified in the claim and administered by the Board or ODF restrict the claimants' right to divide the property and develop it for residential use. ORS 527.730 provides that "[n]othing in the Oregon Forest Practices Act shall prevent the conversion of forestland to any other use." The claim submitted by the claimants proposes a conversion. To the extent that the claimants may propose a forest operation in conjunction with the conversion, claimants have not submitted a written notification as required by law. Without a notification ODF is unable to determine whether the laws listed in the claim apply to the claimants' use of the property or restrict their use of the property. As a result, ODF has not enforced an existing state land use

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<sup>1</sup> This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

regulation with respect to the claimants' use of the property. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

See DLCD Final Staff Report.

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

See DLCD Final Staff Report for requirements.

#### **Findings of Fact and Conclusions**

ODF adopts the findings of fact and conclusions of law regarding the timeliness of this claim contained in the DLCD Final Staff Report for this claim.

### **V. ANALYSIS OF CLAIM**

#### **1. Ownership**

ODF adopts the findings of fact and conclusions of law regarding ownership contained in the DLCD Final Staff Report for this claim.

#### **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 claimants desire compensation or the right to partition the 9.89-acre property from an adjoining property, and to divide the resulting legal parcel into eight, one-acre lots and to develop a dwelling on each lot. The claim lists the following state statutes administered by ODF or the Board as laws that restrict the use of the property as the basis for the claim: ORS 526 and 527.610 et seq. The claim lists no administrative rules of the Board. The only discussion in the claim as to how or why these laws restrict the use of the property that the claimants seek to carry out is the following statement: "Restricts land division and residential development." The property in tax lot 1601 is zoned Exclusive Farm Use 80, which allows forestry. The laws listed in the claim only apply to forest operations, which is not the use the claimants have described in their claim.

One of the cited laws, ORS 527.730, Conversion of forestland to other uses, states, "Nothing in the Oregon Forest Practices Act shall prevent the conversion of forestland to any other use." No laws enforced by the Board or ODF restrict the division of the property or the establishment of dwellings.

The subject property does appear to include trees. Certain uses of property are forest "operations" that are regulated under the Forest Practices Act. If trees are harvested for commercial use, some laws listed in the claim will apply to the operation.

A notification of intent to conduct a forest operation is required in order for ODF to determine whether laws it or the Board may enforce apply to the claimants' intended use of the subject property in a way that restricts the use of the subject property, and reduces its fair market value. No notification has been made.

The claim lists additional state statutes and regulations that are administered by the Department of Land Conservation and Development. These statutes and regulations are not administered or enforced by the Board and ODF and are not addressed in this report.

### **Conclusions**

Nothing in the laws that are listed in the claim and enforced or administered by ODF or the Board applies to or restricts the division of the property or residential development of this property by the claimants.

Persons proposing to conduct a forest operation are required to submit a notification of the operation to ODF. Nothing in ORS 197.352 relieves an operator or landowner from this obligation, and until a notification is submitted, ODF is unable to determine whether laws it or the Board administers apply to the claimants' use of the property.

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

In order to establish a valid claim, ORS 197.352(1) requires that any laws 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 claimants have not demonstrated that any land use regulations administered by ODF or the Board restrict their use of the subject property or reduce its fair market value. The documentation submitted with the claim does not include any information concerning how laws administered by ODF or the Board have had the effect of reducing the fair market value of the property.

## **Conclusions**

The claimants have not demonstrated that laws enforced or administered by ODF or the Board restrict their use of this property or affect its fair market value.

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

ORS 197.352 does not apply to certain land use regulations. These exemptions are set forth in ORS 197.352(3).

### **Findings of Fact**

ORS 197.352(3) exempts laws that were enacted before a claimant or a family member acquired an interest in the property. Claimant Allan Adamson acquired an interest in the subject property on December 31, 1975. Most forest practice laws were first enacted in 1971 and July 1, 1972, although some date back to 1941. Claimant Nell Adamson acquired an interest in the property on August 5, 1998. At that time, virtually all current forest practice laws were in effect. The claimants' parents acquired the subject property on April 21, 1945. ODF is unable to determine whether 197.352(3)(E) or other exemptions in 197.352(3) may apply because the claimants have not proposed a use that is subject to these laws.

Some FPA regulations were enacted to control water pollution resulting from forest operations. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety..., including pollution control." Such regulations may apply to the property, depending upon the activities the claimants may wish to undertake.

Other FPA regulations cited by the claimants may be exempted under 197.352(3).

## **Conclusions**

ODF concludes that some of the listed land use regulations are likely exempt under ORS 197.352(3). Until there is a notification of an operation, however, a final determination of the applicability of the listed laws to a particular forest operation on the property cannot be made.

Laws in effect when family members of claimants Allan and Nell Adamson acquired the subject property are exempt under ORS 197.352(3)(E), and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to the claimants' use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of property until claimants submit a notification of intent to conduct a commercial forest operation. When the claimants submit a notification, 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**

Based on the current record, the claimants are not entitled to relief under ORS 197.352 from ODF or the Board. ODF denies any relief for this claim because neither the Board nor the Department has enforced laws that restrict the division of the subject property into parcels or lots, or the use of the property for residential purposes.

## **VII. COMMENTS ON THE DRAFT REPORT**

ODF issued its draft staff report on this claim on May 9, 2006. OAR 125-145-0100(3), provides 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.