

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. M124533
(BALLOT MEASURE 37) OF)	
Francis D. Martin, CLAIMANT)	

Claimant: Francis D. Martin (the Claimant)

Property: Township 4N, Range 2W, Section 23, Tax lots 100, 300, 400, 700 and 800,
Columbia County (the Property)

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

Claimant 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 Francis Martin's division of tax lots 100, 300, 700 and 800 (totaling 34.30 acres) into 17 approximately two-acre parcels for residential development: applicable provisions of Goal 14 and OAR 660-004-0040, adopted after the claimant acquired tax lots 100, 300, 700 and 800.

In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Francis Martin's division of tax lot 400 (5.39 acres) into two approximately two-acre parcels and to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after he acquired tax lot 400.

The above land use regulations will not apply to the claimant 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 tax lot 700 in 1958; tax lots 300, 400 and 800 in 1978; and tax lot 100 in 1994.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect when he acquired tax lot 700 on April 11, 1958; tax lots 300, 400 and 800 on December 31, 1978; and tax lot 100 on December 13, 1994. On December 31, 1978, the property was subject to the requirements of the statewide planning goals and ORS 215 then in effect. On December 13, 1994, tax lot 100 was subject to the requirements of Goal 14, as implemented by Columbia County's acknowledged comprehensive plan.

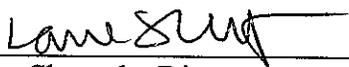
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant 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 the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

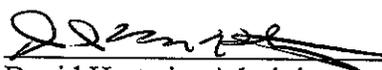
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for him to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant 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 claimant.

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 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 11th day of September, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 11th day of September, 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 197.352, 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.”

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

September 11, 2006

STATE CLAIM NUMBER: M124533

NAME OF CLAIMANT: Francis D. Martin

MAILING ADDRESS: 56661 Turley Road
Warren, Oregon 97053

PROPERTY IDENTIFICATION: Township 4N, Range 2W, Section 23
Tax lots 100, 300, 400, 700 and 800
Columbia County

OTHER CONTACT INFORMATION: Betty Karsten
51637 Southwest Old Portland Road
Scappoose, Oregon 97056

DATE RECEIVED BY DAS: March 21, 2006

180-DAY DEADLINE: September 17, 2006

I. SUMMARY OF CLAIM

The claimant, Francis Martin, seeks compensation in the amount of \$1,233,000 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.¹ The claimant desires compensation or the right to divide the 39.63-acre subject property into 19 approximately two-acre parcels for residential development.² The subject property is located on Turley Road, near Warren, in Columbia 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

¹ The subject property includes five tax lots. Tax lot 100 consists of 5.09 acres, tax lot 300 consists of 10.76 acres, tax lot 400 consists of 5.39 acres, tax lot 700 consists of 6.40 acres and tax lot 800 consists of 12.05 acres.

² The claimant also requests that a decision of the department be transferable with the property. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. A determination of transferability is beyond the scope of relief that the department may grant under ORS 197.352. The Oregon Department of Justice has advised the department that "if the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost." Therefore, the relief granted in this report cannot and does not create a transferable waiver.

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 Francis Martin's division of the tax lots 100, 300, 700 and 800 (totaling 34.30 acres) into 17 approximately two-acre parcels for residential development: applicable provisions of Statewide Planning Goal 14 (Urbanization) and Oregon Administrative Rules (OAR) 660-004-0040 adopted after the claimant acquired tax lots 100, 300, 700 and 800.

The 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 Francis Martin's division of tax lot 400 (5.39 acres) into two approximately two-acre parcels and his development of a dwelling on each parcel: applicable provisions of Goal 3 (Agricultural Lands), ORS 215 and OAR 660, division 33, enacted or adopted after he acquired tax lot 400.

The above land use regulations will not apply to the claimant 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 tax lot 700 in 1958; tax lots 300, 400 and 800 on December 31, 1978; and tax lot 100 on December 13, 1994. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On July 10, 2006, 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 March 21, 2006, for processing under OAR 125, division 145. The claim identifies Columbia County Zoning Sections 304.1 and 604.1 as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

The subject property includes five tax lots. The claimant, Francis Martin, acquired tax lot 700 on April 11, 1958, and the claimant’s family member, Inez Martin, acquired tax lots 300, 400 and 800 on April 11, 1958, as reflected by deeds included with the claim. In 1977, Inez Martin conveyed tax lots 300, 400 and 800 to the claimant but reserved in herself a life estate in all three tax lots. Inez Martin died on December 31, 1978, the date on which the claimant became the present owner of tax lots 300, 400 and 800. The claimant acquired tax lot 100 from another family member, Gerald Martin, on December 13, 1994, as reflected by a deed included with the claim. Gerald Martin acquired tax lot 100 on March 30, 1964. The Columbia County Assessor’s Office confirms the claimants’ current ownership of all of the subject tax lots.

Conclusions

The claimant, Francis Martin, is an “owner” of the subject property, as that term is defined by ORS 197.352(11)(C), as of April 11, 1958, for tax lot 700; as of December 31, 1978, for tax lots 300, 400 and 800; and as of December 13, 1994, for tax lot 100. Inez Martin is a “family member,” as defined by ORS 197.352(11)(A), as of April 11, 1958, with regard to tax lots 300, 400 and 800. Gerald Martin is also a “family member,” as defined by ORS 197.352(11)(A), as of March 30, 1964, with regard to tax lot 100.

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 claimant's 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 claimant or a family member acquired the property.

Findings of Fact

The claim indicates that the claimant desires to divide the 39.63-acre subject property into 19 approximately two-acre parcels for residential development. It indicates that Columbia County Zoning Sections 304.1 and 604.1 prevent the desired use.

The claim is based generally on the applicable provisions of state law that require rural residential and Exclusive Farm Use (EFU) zoning.

Tax lots 100, 300, 700 and 800 are zoned RR-5 by Columbia County. The county's RR-5 zone (which requires a five-acre minimum lot or parcel size) is a rural residential zone consistent with Goal 14, which generally requires that land outside the urban growth boundaries be used for rural uses.

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,³ 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 if a county rural residential zone in effect on October 4, 2000, specifies a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size that is already in effect (OAR 660-004-0040(7)(c)). Some relief from this provision is available for lots or parcels having more than one permanent habitable dwelling pursuant to OAR 660-004-0040(7)(h). The rule also provides that a county's minimum lot size requirement in a rural residential zone shall not be amended to allow a smaller minimum lot size without approval of an exception to Goal 14 (OAR 660-004-0040(6)). Because Columbia County's rural residential zone was in effect on October 4, 2000, and requires a minimum lot size of five acres, the minimum lot size for any new lot or parcel must equal or exceed five acres.

Tax lot 400 is zoned PA-38 (an EFU zone) by Columbia County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant's 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 Goal 3, be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

³ *1000 Friends of Oregon v. LCDL (Curry County)*, 301 Or 447 (1986).

⁴ Tax lot 400 is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

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.)

The claimant acquired tax lot 700 in 1958 and his family members acquired tax lots 300, 400 and 800 in 1958 and tax lot 100 in 1964, all prior to the adoption of the statewide planning goals and their implanting statutes and regulations.

Conclusions

The minimum lot size requirements for rural residential lots or parcels established by Goal 14 and OAR 660-004-0040 were adopted since the claimant acquired tax lot 700 in 1958 and the claimant's family acquired tax lots 300 and 800 in 1958 and tax lot 100 in 1964, and do not allow the desired division of these tax lots. In addition, 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 enacted or adopted since the claimant's family acquired tax lot 400 in 1958, and do not allow the desired division or development of tax lot 400.

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 claimant has identified. There may be other laws that currently apply to the claimant's use of the subject property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (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 \$1,233,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the claimant's assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimant is Francis Martin who acquired tax lot 700 on April 11, 1958, and whose family acquired tax lots 300, 400 and 800 on April 11, 1958, and tax lot 100 on March 30, 1964. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant and his family acquired the subject property restrict the claimant's desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$1,233,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department or the department since the claimant and his family acquired the subject 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 claimant acquired tax lot 700 and the claimant's family acquired tax lots 100, 300, 400 and 800, including applicable provisions of Goal 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33, which Columbia County has implemented through its RR-5 and PA-38 zones. All of these land use regulations were enacted or adopted after the claimant acquired tax lot 700 and after his family acquired tax lots 100, 300, 400 and 800.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on division and development were in effect when the claimant acquired tax lot 700 in 1958 and the claimant's family acquired tax lots 300, 400 and 800 in 1958 and tax lot 100 in 1964. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimant acquired tax lot 700 and his family acquired tax lots 100, 300, 400 and 800 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 one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimant's desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$1,233,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimant's desired use of the subject property was allowed under the standards in effect when the claimant and his family acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Francis Martin to use the subject property for a use permitted at the time he acquired tax lot 700 on April 11, 1958, tax lots 300, 400 and 800 on December 31, 1978, and tax lot 100 on December 13, 1994.

The claimant acquired tax lots 300, 400 and 800 after the adoption of the statewide planning goals, but before the Commission acknowledged Columbia County's land use regulations to be in compliance with statewide planning goals pursuant to ORS 197.250 and 197.251. The property was recognized as resource land when the claimant acquired it, and because Commission had not acknowledged Columbia County's plan and land use regulations when the claimant acquired tax lots 300, 400 and 800 in 1978, the statewide planning goals, and particularly Goals 3, 4 and 14 applied directly to these tax lots when the claimant acquired them.⁵

⁵ 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

Goal 3 became effective on January 25, 1975. As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." The claimant's opportunity to divide tax lots 300, 400 and 800 when he acquired them in 1978 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.

Goal 4 went into effect on January 25, 1975, "to conserve forest lands for forest uses" and required, "Lands suitable for forest uses shall be inventoried and designated as forest lands. Existing forest land uses shall be protected unless proposed changes are in conformance with the comprehensive plan." Those forest uses were defined as follows: "(1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock."

At the time the claimant acquired tax lot 100 in 1994, this tax lot was subject to the standards of Goal 14, as implemented by Columbia County's acknowledged RR-5 zone.

The claim does not establish whether or to what extent the claimant's desired use of the property satisfies the requirements of Goals 3, 4, and 14 and ORS 215 in effect when the claimant acquired tax lots 300, 400 and 800, or the requirements of Goal 14 in effect when he acquired tax lot 100.

In addition to the applicable provisions of Goals 3, 4 and 14 and ORS 215 in effect when the claimant acquired tax lots 300, 400 and 800, and the provisions of Goal 14 in effect when he acquired tax lot 100, there may be other laws that apply to the claimant's use of the property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimant 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 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 use that the claimant has 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 claimant should be aware that the less information he has provided to the department in his claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to his use of the subject property.

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).

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 Francis Martin's division of tax lots 100, 300, 700 and 800 (totaling 34.30 acres) into 17 approximately two-acre parcels for residential development: applicable provisions of Goal 14 and OAR 660-004-0040, adopted after the claimant acquired tax lots 100, 300, 700 and 800.

In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Francis Martin's division of tax lot 400 (5.39 acres) into two approximately two-acre parcels and to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after he acquired tax lot 400.

The above land use regulations will not apply to the claimant 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 tax lot 700 in 1958; tax lots 300, 400 and 800 in 1978; and tax lot 100 in 1994.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect when he acquired tax lot 700 on April 11, 1958; tax lots 300, 400 and 800 on December 31, 1978; and tax lot 100 on December 13, 1994. On December 31, 1978, the property was subject to the requirements of the statewide planning goals and ORS 215 then in effect. On December 13, 1994, tax lot 100 was subject to the requirements of Goal 14, as implemented by Columbia County's acknowledged comprehensive plan.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant 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 the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for him 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 claimant 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 claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on August 25, 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.