

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. M124875
(BALLOT MEASURE 37) OF)
Helen Caldwell and Betty Cone, CLAIMANTS)

Claimants: Helen Caldwell and Betty Cone (the Claimants)

Property: Township 3S, Range 3W, Section 13, Tax lots 2500 and 2900
Township 3S, Range 2W, Section 18, Tax lot 200, Yamhill 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 Helen Caldwell and Betty Cone's division of subject property into 1- to 2-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after the claimants acquired tax lot 200 on January 30, 1973; applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after the claimants acquired tax lot 2500 on February 19, 1976; and applicable provisions of Goal 14 and OAR 660-004-0040 enacted or adopted after the claimants acquired tax lot 2900 on February 19, 1976.

The land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 200 in 1973 and tax lots 2500 and 2900 on February 19, 1976.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect when they acquired tax lot 200 on January 30, 1973, and tax lots 2500 and 2900 on February 19, 1976. On February 19, 1976, tax lots 2500 and 2900 were subject to the applicable provisions of Goals 3 and 14 and ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

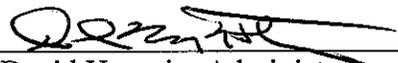
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

This Order is entered by the Manager for the Measure 37 Services Division 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


Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 2nd day of October, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 2nd day of October, 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

October 2, 2006

STATE CLAIM NUMBER: M124875

NAMES OF CLAIMANTS: Helen Caldwell
Betty Cone

MAILING ADDRESS: PO Box 2381
Idyllwild, California 92549

4116 Rye Mill Court
Charlotte, North Carolina 28277

PROPERTY IDENTIFICATION: Township 3S, Range 3W, Section 13
Tax lots 2500 and 2900

Township 3S, Range 2W, Section 18
Tax lot 200
Yamhill County

OTHER CONTACT INFORMATION: Michael Gunn
PO Box 1046
Newberg, Oregon 97132

DATE RECEIVED BY DAS: April 12, 2006

180-DAY DEADLINE: October 9, 2006

I. SUMMARY OF CLAIM

The claimants, Helen Caldwell and Betty Cone, seek compensation in the amount of \$3,375,000 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 43.03-acre subject property into 1- or 2-acre parcels and to develop a dwelling on each parcel. The subject property consists of tax lots 200, 2500 and 2900 and is located at the geographic coordinates listed above, near Newberg, in Yamhill 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 Helen Caldwell and Betty Cone's division of the 43.03-acre subject property into 1- or 2-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6, and 33, enacted or adopted after the claimants acquired tax lot 200 on January 30, 1973; applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after the claimants acquired tax lot 2500 on February 19, 1976; and applicable provisions of Goal 14 (Urbanization) and OAR 660-004-0040, enacted or adopted after the claimants acquired tax lot 2900 on February 19, 1976.

The above laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 200 in 1973 and when they acquired tax lots 2500 and 2900 on February 19, 1976. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 24, 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, no written comments were received in response to the 10-day notice.

IV. TIMELINESS OF CLAIM

Requirement

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

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

Findings of Fact

This claim was submitted to DAS on April 12, 2006, for processing under OAR 125, division 145. The claim identifies Goals 3, 4 and 14; ORS 215; OAR 660-004-0018 and 660-004-0040; and Yamhill County zoning as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

The claimants, Helen Caldwell and Betty Cone, acquired tax lot 200 from their mother, Grace Branchflower, on January 30, 1973, as reflected by an estate probate document included with the claim. Grace Branchflower acquired tax lot 200 on January 12, 1940, as evidenced by a quitclaim deed included with the claim. The claimants acquired tax lots 2500 and 2900 from their stepfather, Kenneth Branchflower, on February 19, 1976, as reflected by a lot book service report, a probate document and a death certificate included with the claim. Kenneth Branchflower acquired those tax lots on August 16, 1946, as reflected by a lot book service reference to a warranty deed.

Helen Caldwell conveyed her undivided one-half interest in the subject property to the James and Helen Caldwell Trust on January 24, 1989, as reflected by a quitclaim deed included with the claim.¹ The Yamhill County Assessor’s Office confirms the claimants’ current ownership of the subject property.

Conclusions

The claimants, Helen Caldwell and Betty Cone, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of January 30, 1973, for tax lot 200 and as of February 19, 1976, for tax lots 2500 and 2900. The claimants’ mother and stepfather, Grace and Kenneth Branchflower, are “family members” as defined by ORS 197.352(11)(A). Grace Branchflower acquired tax lot 200 on January 12, 1940, and Kenneth Branchflower acquired tax lots 2500 and 2900 on August 16, 1946.

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.

¹ Transfer of property to a revocable trust does not result in a change in ownership for the purposes of ORS 197.352.

Findings of Fact

The claim indicates that the claimants desire to divide the 43.03-acre subject property into 1- to 2-acre parcels and to develop a dwelling on each parcel. It indicates that current land use regulations do not allow the desired use.

The claim is based generally on the state laws that require Exclusive Farm Use (EFU) and forestry zoning and regulate rural residential zoning, and restrict uses on property in these zones.

Tax lot 200 is zoned by Yamhill County as Agriculture/Forest (AF-10), which is a mixed agricultural and forest land zone, as required by 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, 1993.² Depending on the predominant use on that date, tax lot 200 is subject to either the requirements for dwellings applicable under EFU zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

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 10-acre minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Yamhill County's AF-10 zone is 10 acres. Tax lot 200 cannot be divided into parcels smaller than 10 acres.

Tax lot 2500 is zoned by Yamhill County as EF-20, an EFU zone, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because tax lot 2500 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 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 the development of dwellings on existing or proposed parcels on that land.

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

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

² No information was provided to the department regarding the predominant use of tax lot 200 on January 1, 1993.

³ Tax lot 2500 is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

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.)

Tax lot 2900 is zoned by Yamhill County as Very Low Density Residential (VLDR-2.5). The county's VLDR-2.5 zone is a rural residential zone consistent with Goal 14, which generally requires that land outside of urban growth boundaries be used for rural uses. The VLDR-2.5 zone requires a minimum size of 2.5 acres for the creation of new lots or parcels.

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,⁴ 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 Yamhill County's rural residential zone was in effect on October 4, 2000, and requires a minimum lot size of 2.5 acres, the minimum lot size for any new lot or parcel must equal or exceed 2.5 acres.

The claimants' family first acquired the subject property in 1940 and 1946, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established under Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 4, 6, and 33, were enacted or adopted after the claimants' family acquired the subject property in 1940 and 1946 and do not allow the desired division and development of the property. These regulations restrict the use of the property relative to the uses allowed when the claimants' family acquired the subject property in 1940 and 1946.

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."

⁴ *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

Findings of Fact

The claim includes an estimate of \$3,375,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on the claimants' own assessment of the value of their property.

Conclusions

As explained in Section V.(1) of this report, the claimants are Helen Caldwell and Betty Cone whose family members acquired the subject property in 1940 and 1946. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the 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 claimants' family acquired the subject property restrict the claimants' desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$3,375,000.

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 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 660-004-0040 and OAR 660, divisions 6, and 33, which Yamhill County has implemented through its current AF-10, EF-20 and VLDR-2.5 zones. All of these land use regulations were enacted or adopted after the claimants' family acquired the subject property.

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 in 1940 and 1946. 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 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 claimants' 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 \$3,375,000. 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 claimants' desired use of the subject property was allowed under the standards in effect when the claimants' 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 Helen Caldwell and Betty Cone to use the subject property for a use permitted at the time they acquired tax lot 200 on January 30, 1973, and tax lots 2500 and 2900 on February 19, 1976.

The claimants acquired tax lot 200 on January 30, 1973, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

The claimants acquired tax lot 2500 in 1976, after the adoption of the statewide planning goals, but before the Commission acknowledged Yamhill County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged the county's plan and land use regulations when the claimants acquired tax lot 2500 on February 19, 1976, the statewide planning goals, and Goal 3 in particular, applied directly to the property when they acquired it.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 comprehensive plan and implementing 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 3 (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 applied directly to such local land use

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. 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." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the claimants' opportunity to divide tax lot 2500 when they acquired it in 1976 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.

Under the Goal 3 standards in effect on February 19, 1976, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition).

The claimants also acquired tax lot 2900 after the adoption of the statewide planning goals, but before the Commission acknowledged Yamhill County's land use regulations to be in compliance with statewide planning goals pursuant to ORS 197.250 and 197.251. Tax lot 2900 was recognized as resource land when the claimants acquired it in 1976, and because the Commission had not acknowledged Yamhill County's plan and land use regulations when the claimants acquired this tax lot, the statewide planning goals, and particularly Goals 3 and 4, in addition to Goal 14, would have applied directly to the property had the claimants sought the desired use at the time they acquired it.⁶ Alternatively, the claimants would have been required to establish a basis for an exception to compliance with those goals pursuant to the Goal 2 (Land Use Planning) exceptions process. However, through the county's acknowledgement process, tax lot 2900 was ultimately acknowledged as exceptions land pursuant to Goal 2, and zoned by the county for rural residential use. Therefore, while the county could now require that tax lot 2900 be evaluated as resource land, as would have been required in 1976, because of the property's ultimate designation as rural residential exceptions land, the county could also require that the claimants' desired use be subject to compliance directly with Goal 14.

decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

⁶ The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of each county's land use regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 569 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer directly applied to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Foster v. Polk County*, 115 Or App 475 (1992); *Kenagy v. Benton County*, 115 Or App 131 (1992).

The claim does not establish whether the claimants' desired division and development of tax lot 2500 and desired division of tax lot 2900 could have satisfied the standards in effect when the claimants acquired these tax lots.

In addition to the applicable provisions of Goals 3 and 14 and ORS 215 in effect when the claimants acquired tax lots 2500 and 2900 on February 19, 1976, there may be other laws that 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 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 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 their claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

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 Helen Caldwell and Betty Cone's division of subject property into 1- to 2-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after the claimants acquired tax lot 200 on January 30, 1973; applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after the claimants acquired tax lot 2500 on February 19, 1976; and applicable provisions of Goal 14 and OAR 660-004-0040 enacted or adopted after the claimants acquired tax lot 2900 on February 19, 1976.

The land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 200 in 1973 and tax lots 2500 and 2900 on February 19, 1976.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect when they acquired tax lot 200 on January 30, 1973, and tax lots 2500 and 2900 on February 19, 1976. On February 19, 1976, tax lots 2500 and 2900 were subject to the applicable provisions of Goals 3 and 14 and ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on September 18, 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.