

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)
 COMPENSATION UNDER ORS 197.352)
 (BALLOT MEASURE 37) OF)
 Margaret L. Hoffman, CLAIMANT)

FINAL ORDER A
 CLAIM NO. M129307

Claimant: Margaret L. Hoffman (the Claimant)

Property: Township 4S, Range 3E, Section 9, Tax lots 1500 and 1502
 Township 4S, Range 3E, Section 17, Tax lot 1200, Clackamas 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:

- In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Margaret Hoffman's division of the 184.14-acre subject property into one- to five-acre parcels and to her development a dwelling on the resulting undeveloped parcels, as follows:

Claimant:	Margaret Hoffman		
Tax Lot:	1200	1500	1502
Acquisition Date:	November 21, 1988	November 1, 1954 (90.8 acres); July 22, 1993 (19.17 acres); December 30, 1999 (7.71 acres) and June 29, 2004 (27.26 acres)	November 1, 1954

Laws That Will Not Apply:	Applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after November 21, 1988	Applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after November 1, 1954, July 22, 1993, December 30, 1999, or June 29, 2004 (as applicable based on the acquisition dates identified above)	Applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after November 1, 1954
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The above laws will not apply to Margaret Hoffman for the use described in this report, and only to the extent that use was permitted at the time she acquired each portion of each tax lot that composes the subject property. The department acknowledges that the relief to which Margaret Hoffman is entitled under ORS 197.352 will not allow her to use a 34.97-acre portion of tax lot 1500 acquired on December 30, 1999, and June 29, 2004, in the manner set forth in the claim.

Further, in lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Robert Hoffman's division of the tax lot 1200 into one- to five-acre parcels and to his development of a dwelling on the resulting undeveloped parcels, as follows.

Claimant:	Robert Hoffman
Tax Lot:	1200
Acquisition Date:	November 21, 1988
Laws That Will Not Apply:	Applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after November 21, 1988

The above laws will not apply to Robert Hoffman only to the extent necessary to allow him to use tax lot 1200 for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 1200.

2. The action by the State of Oregon provides the state's authorization to Margaret Hoffman to use the property for the use described in this report, subject to the standards in effect on November 1, 1954, for tax lot 1502 and a 90.8-acre portion of tax lot 1500; November 21, 1988, for tax lot 1200; July 22, 1993, for a 19.17-acre portion of tax lot 1500; December 30, 1999, for a 7.71-acre portion of tax lot 1500; and June 29, 2004, for a 27.26-acre portion of tax lot 1500. The action by the State of Oregon also provides the state's authorization to Robert Hoffman to use the property for the use described in this report, subject to the standards in effect on November 21, 1988, for tax lot 1200. On November 21, 1988, tax lot 1200 was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Clackamas County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect. On July 22, 1993, a 19.17-acre portion of tax lot 1500 was to compliance with Goals 3 and 4 and ORS 215 then in effect. On December 30, 1999, and June 29, 2004, a 34.97-acre portion of tax lot 1500 was subject to applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, 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

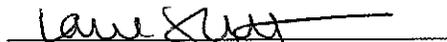
“permit” as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

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 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 31st day of October, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 31st 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."

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 B
 COMPENSATION UNDER ORS 197.352) CLAIM NO. M129307
 (BALLOT MEASURE 37) OF)
 Robert J. Hoffman, CLAIMANT)

Claimant: Robert J. Hoffman (the Claimant)

Property: Township 4S, Range 3E, Section 17, Tax lot 1200, Clackamas 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 Margaret Hoffman's division of the 184.14-acre subject property into one- to five-acre parcels and to her development a dwelling on the resulting undeveloped parcels, as follows:

Claimant:	Margaret Hoffman		
Tax Lot:	1200	1500	1502
Acquisition Date:	November 21, 1988	November 1, 1954 (90.8 acres); July 22, 1993 (19.17 acres); December 30, 1999 (7.71 acres) and June 29, 2004 (27.26 acres)	November 1, 1954

Laws That Will Not Apply:	Applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after November 21, 1988	Applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after November 1, 1954, July 22, 1993, December 30, 1999, or June 29, 2004 (as applicable based on the acquisition dates identified above)	Applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after November 1, 1954
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The above laws will not apply to Margaret Hoffman for the use described in this report, and only to the extent that use was permitted at the time she acquired each portion of each tax lot that composes the subject property. The department acknowledges that the relief to which Margaret Hoffman is entitled under ORS 197.352 will not allow her to use a 34.97-acre portion of tax lot 1500 acquired on December 30, 1999, and June 29, 2004, in the manner set forth in the claim.

Further, in lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Robert Hoffman's division of the tax lot 1200 into one- to five-acre parcels and to his development of a dwelling on the resulting undeveloped parcels, as follows.

Claimant:	Robert Hoffman
Tax Lot:	1200
Acquisition Date:	November 21, 1988
Laws That Will Not Apply:	Applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after November 21, 1988

The above laws will not apply to Robert Hoffman only to the extent necessary to allow him to use tax lot 1200 for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 1200.

2. The action by the State of Oregon provides the state's authorization to Margaret Hoffman to use the property for the use described in this report, subject to the standards in effect on November 1, 1954, for tax lot 1502 and a 90.8-acre portion of tax lot 1500; November 21, 1988, for tax lot 1200; July 22, 1993, for a 19.17-acre portion of tax lot 1500; December 30, 1999, for a 7.71-acre portion of tax lot 1500; and June 29, 2004, for a 27.26-acre portion of tax lot 1500. The action by the State of Oregon also provides the state's authorization to Robert Hoffman to use the property for the use described in this report, subject to the standards in effect on November 21, 1988, for tax lot 1200. On November 21, 1988, tax lot 1200 was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Clackamas County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect. On July 22, 1993, a 19.17-acre portion of tax lot 1500 was to compliance with Goals 3 and 4 and ORS 215 then in effect. On December 30, 1999, and June 29, 2004, a 34.97-acre portion of tax lot 1500 was subject to applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, 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.

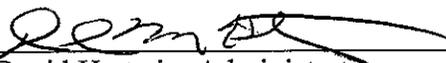
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352,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

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



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

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 31st 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:

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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."

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)
COMPENSATION UNDER ORS 197.352)
(BALLOT MEASURE 37) OF)
Robert J. Hoffman, CLAIMANT)

FINAL ORDER C
CLAIM NO. M129307

Claimant: Robert J. Hoffman (the Claimant)

Property: Township 4S, Range 3E, Section 9, Tax lots 1500 and 1502
Clackamas County (the property)

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

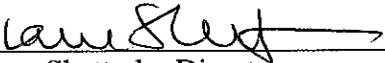
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, 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 denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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

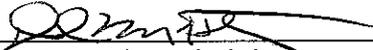
FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD

Dated this 31st day of October, 2006.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division

Dated this 31st day of October, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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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)

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

October 31, 2006

STATE CLAIM NUMBER: M129307

NAMES OF CLAIMANTS: Robert J. and Margaret L. Hoffman

MAILING ADDRESS: 20374 South Butte Road
Beavercreek, Oregon 97004

PROPERTY IDENTIFICATION: Township 4S, Range 3E
Section 9: tax lots 1500 and 1502
Section 17: tax lot 1200
Clackamas County

OTHER CONTACT INFORMATION: Aaron Z. Matsusick
5909 Southeast Oetkin Road
Milwaukie, Oregon 97267

DATE RECEIVED BY DAS: May 8, 2006

180-DAY DEADLINE: November 4, 2006

I. SUMMARY OF CLAIM

The claimants, Robert and Margaret Hoffman, seek compensation in the amount of \$15 million 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 184.14-acre subject property into one- to five-acre parcels and to develop a dwelling on each resulting undeveloped parcel.¹ The subject property is located at 26455 South Beavercreek Road, near Beavercreek, in Clackamas County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid in part. 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 Margaret Hoffman's division of the 184.14-acre subject property into one- to five-

¹ The subject property includes three tax lots. Tax lot 1200 consists of 19.55 acres; tax lot 1500 consists of 144.94 acres; and tax lot 1502 consists of 19.65 acres.

acre parcels and to her development of a dwelling on the resulting undeveloped parcels, as follows:

Claimant:	Margaret Hoffman		
Tax Lot:	1200	1500	1502
Acquisition Date:	November 21, 1988	November 1, 1954 (90.8 acres); July 22, 1993 (19.17 acres); December 30, 1999 (7.71 acres) and June 29, 2004 (27.26 acres)	November 1, 1954
Laws That Will Not Apply:	Applicable provisions of Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after November 21, 1988	Applicable provisions of Goals 3 and 4 (Forest Lands), ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after November 1, 1954, July 22, 1993, December 30, 1999, or June 29, 2004 (as applicable based on the acquisition dates identified above)	Applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after November 1, 1954

The above laws will not apply to Margaret Hoffman for the use described in this report, and only to the extent that use was permitted at the time she acquired each portion of each tax lot that makes up the subject property. The department acknowledges that the relief to which Margaret Hoffman is entitled under ORS 197.352 will not allow her to use the 34.97-acre portion of tax lot 1500 she acquired on December 30, 1999, and June 29, 2004, in the manner set forth in the claim.

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 Robert Hoffman's division of tax lot 1200 into one- to five-acre parcels and to his development a dwelling on the resulting undeveloped parcels, as follows:

Claimant:	Robert Hoffman
Tax Lot:	1200
Acquisition Date:	November 21, 1988
Laws That Will Not Apply:	Applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after November 21, 1988

The above laws will not apply to Robert Hoffman for the use described in this report and only to the extent that use was permitted when he acquired tax lot 1200.

The department further determined that Robert Hoffman's claim for tax lots 1500 and 1502 is not valid because he has not established his ownership of these tax lots. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 25, 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, four written comments were received in response to the 10-day notice.

The comments do not address whether the claim meets the criteria for relief (compensation or waiver) 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 letters 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 May 8, 2006, for processing under OAR 125, division 145. The claim identifies Clackamas County's RA-1, TT-20 and AG/F-80 zones 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

Tax lots 1500 and 1502 are composed of original tax lots 1400, 1500, 1501, 1502, 1600 and 1700, which one or both of the claimants acquired on separate dates, as follows:

Date:	Party:	Documents Included With the Claim:	Description:	Current Tax Lots:
November 1, 1954	Robert and Margaret Hoffman	Warranty Deed, Book 488, page 63	Acquire 90.8 acres consisting of tax lots 1500, 1501 and 1502	1500 and 1502
April 28, 1983	Robert Hoffman	Bargain and Sale Deed 83-22865	Acquires 8 acres consisting of tax lots 1600 and 1700	1500
November 15, 1989	Robert Hoffman	Bargain and Sale Deed 89-54974	Acquires 57.99 acres consisting of tax lot 1400	1500 and 1502
July 22, 1993	Robert Hoffman conveys to Margaret Hoffman	Bargain and Sale Deed 93-51628	Conveys 19.17 acres consisting of tax lots 1400, 1501 and 1502	1500 and 1502
December 30, 1999	Margaret Hoffman conveys to Robert and Margaret Hoffman	Warranty Deed 99-119387	Conveys 6.72 acres consisting of tax lot 1501	1500 and 1502
December 30, 1999	Robert Hoffman conveys to Margaret Hoffman	Warranty Deed 99-119389	Conveys 7.71 acres consisting of tax lot 1502	1500
June 29, 2004	Robert Hoffman conveys to Margaret Hoffman	Warranty Deed 2004-012906	Conveys 8 acres of tax lots 1600 and 1700 and the remaining 19.26 acres of tax lot 1400	1500

The claimants acquired tax lot 1400 (57.99 acres of tax lot 1500) from their family members, E.O. and Thelma Hoffman, who first acquired that portion of the property on March 16, 1946, as reflected by a deed included with the claim. Robert and Margaret Hoffman acquired tax lot 1200 on November 21, 1988, as reflected by a warranty deed included with the claim.

Robert Hoffman deeded all of his interest in tax lots 1500 and 1502 to Margaret Hoffman on July 22, 1993, December 30, 1999, and June 29, 2004.

The Clackamas County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Robert and Margaret Hoffman, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C). Robert Hoffman has been owner of tax lot 1200 since November 21, 1988. Margaret Hoffman has been owner of tax lot 1502 and a 90.8-acre portion of tax lot 1500 since November 1, 1954; tax lot 1200 since November 21, 1988; a 19.17-acre portion of tax lot 1500 since July 22, 1993; a 7.71-acre portion of tax lot 1500 since December 30, 1999; and a 27.26-acre portion of tax lot 1500 since June 29, 2004. Robert Hoffman is not an "owner" of tax lots 1500 and 1502 as that term is defined in ORS 197.352(11)(C). E.O. and Thelma Hoffman are "family members" of Margaret Hoffman as defined by ORS 197.352(11)(A) and acquired tax lot 1400 (57.99 acres of tax lot 1500) on March 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.

Findings of Fact

The claim indicates that the claimants desire to divide the 184.14-acre subject property into one-to five-acre parcels and to develop a dwelling on each resulting undeveloped parcel. It indicates that the current zoning prohibits the desired use.

The claim is based generally on the applicable provisions of state law that require mixed farm-forest and Exclusive Farm Use (EFU) zoning and restrict uses on lands zoned mixed farm-forest and EFU.

Tax lots 1500 and 1502 are zoned by Clackamas County as AG/F, 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 lots 1500 and 1502 are 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 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. Tax lots 1500 and 1502 cannot be divided into parcels smaller than 80 acres.

Margaret Hoffman's family first acquired a 57.99-acre portion of tax lot 1500 on March 16, 1946, and Margaret Hoffman acquired tax lot 1502 and a 90.8-acre portion of tax lot 1500 on November 1, 1954, prior to the adoption of statewide planning goals and their implementing statutes and regulations.

Tax lot 1200 is zoned EFU by Clackamas County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the tax lot 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 development of dwellings on existing or proposed parcels on that land.

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

³ Tax lot 1200 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.)

At the time Robert and Margaret Hoffman acquired tax lot 1200, it was subject to Clackamas County's acknowledged EFU zone.⁴ When the claimants acquired tax lot 1200, the claimants' desired use of the property would have been governed by the county's acknowledged General Agriculture District (GAD) zone and the applicable provisions of ORS 215 then in effect.⁵ In 1988, ORS 215.263 (1987 edition) required that divisions of land in EFU zones be "appropriate for the continuation of the existing commercial agricultural enterprise within the area" or not smaller than the minimum size in the county's acknowledged plan. ORS 215.283(1)(f) (1987 edition) generally allowed farm dwellings "customarily provided in conjunction with farm use." Non-farm dwellings were allowed under ORS 215.283(3) if they were determined to be compatible with farm use, not interfere seriously with accepted farm practices, not materially alter the stability of the land use pattern in the area and be situated on generally unsuitable land for the production of farm crops and livestock.

The claim does not establish whether or to what extent the claimants' desired division and development of tax lot 1200 were allowed under the standards in effect when they acquired it on November 21, 1988.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established under Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, were enacted or adopted after Margaret Hoffman acquired tax lot 1502 and a 90.8-acre portion of tax lot 1500 in 1954 and her family acquired a 57.99-acre portion of tax lot 1500 in 1946, and after Robert and Margaret Hoffman acquired tax lot 1200 on November 21, 1988, and do not allow the desired division and

⁴ Clackamas County's EFU zone was acknowledged by the Commission for compliance with Goal 3 on December 31, 1981. At that time, the property was zoned GAD, which established a minimum lot size equivalent to the median lot size of commercial farms within one mile of the subject property, and allowed single-family dwellings through a farm management plan or a non-farm dwelling permit.

⁵ After the county's comprehensive plan and land use regulations were acknowledged by the Commission as complying with the statewide planning goals, the goals and implementing rules no longer applied directly to individual 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) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

development. However, the claim does not establish whether or to what extent Robert and Margaret Hoffman's desired use of tax lot 1200 complies with the standards for land divisions and development under Clackamas County's acknowledged comprehensive plan and EFU zone and the requirements of ORS 215 in effect when the claimants acquired tax lot 1200 on November 21, 1988.

As explained in Section V.(1) of this report, Robert Hoffman is not an "owner" of tax lots 1500 and 1502 as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict his use of tax lots 1500 and 1502 with the effect of reducing the fair market value of these tax lots.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the use that the claimants have identified. There may be other laws that currently apply to the claimants' use of the subject property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of 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.

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 \$15 million 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 a market analysis of similar properties in the surrounding area.

Conclusions

As explained in Section V.(1) of this report, the claimants are: Margaret Hoffman whose family member acquired a 57.99-acre portion of tax lot 1500 in 1946, and who acquired tax lot 1502 and a 90.8-acre portion of tax lot 1500 in 1954, and tax lot 1200 in 1988; and Robert Hoffman who acquired tax lot 1200 in 1988. Robert Hoffman is not an "owner" of tax lots 1500 and 1502, as that term is defined in ORS 197.352(11)(C), and therefore, is not entitled to compensation under ORS 197.352 as to these tax lots. Under ORS 197.352, Margaret Hoffman is due compensation for land use regulations that restrict her use of tax lots 1200, 1500 and 1502 and have the effect of reducing its fair market value, and Robert Hoffman is due compensation for land use regulations that restrict his use of tax lot 1200 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 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 \$15 million.

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 the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Clackamas County has implemented through its AG/F and EFU zones. All of these land use regulations were enacted or adopted after Margaret Hoffman acquired tax lot 1502 and a 90.8-acre portion of tax lot 1500 in 1954 and her family acquired a 57.99-acre portion tax lot 1500 in 1946. With the exception of amendments enacted or adopted after Robert and Margaret Hoffman acquired tax lot 1200 on November 21, 1988, Goal 3, ORS 215 and OAR 660 were in effect when the claimants acquired tax lot 1200.

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 with the exception of laws in effect when Robert and Margaret Hoffman acquired tax lot 1200 in 1988, none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when Margaret Hoffman acquired tax lot 1502 and a 90.8-acre portion of tax lot 1500 in 1954 and her family acquired a 57.99-acre portion tax lot 1500 in 1946. As a result, these laws are not exempt under ORS 197.352(3)(E). Provisions of Goal 3, ORS 215 and OAR 660 in effect when Robert and Margaret Hoffman acquired tax lot 1200 in 1988 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

As explained in Section V.(1) of this report, Robert Hoffman is not an “owner” of tax lots 1500 and 1502 as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to Robert Hoffman as to those tax lots.

Laws in effect when Margaret Hoffman acquired tax lots 1200, 1500 and 1502 and when Robert Hoffman acquired tax lot 1200 are exempt under ORS 197.352(3)(E) and will continue to apply to the claimants’ use of the property. In addition, 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, the siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to the claimants' use of the property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of 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. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

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 \$15 million. 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 Margaret Hoffman acquired tax lot 1502 and the 90.8-acre portion of tax lot 1500 and her family acquired a 57.99-acre portion of tax lot 1500, and when Robert Hoffman acquired tax lot 1200. 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: Margaret Hoffman to use the subject property for a use permitted at the time she acquired tax lot 1502 and a 90.8-acre portion of tax lot 1500 on November 1, 1954; tax lot 1200 on November 21, 1988; a 19.17-acre portion of tax lot 1500 on July 22, 1993; a 7.71-acre portion of tax lot 1500 on December 30, 1999; and the remaining 27.26-acre portion of tax lot 1500 on June 29, 2004; and Robert Hoffman to use tax lot 1200 for a use permitted at the time he acquired this tax lot on November 21, 1988.

When Margaret Hoffman acquired the 19.17-acre portion of tax lot 1500 on July 22, 1993, the property was subject to Clackamas County's acknowledged TT-20 zone. When she acquired that portion of tax lot 1500, the desired division and development of the property would have been governed by the county's TT-20 zone and the applicable provisions of ORS 215 and OAR 660,

divisions 5, and 6, then in effect. At that time, Clackamas County's TT-20 zone established a 20-acre minimum lot size for new lots or parcels.

When Margaret Hoffman acquired the remaining 34.97-acre portion of tax lot 1500 on December 30, 1999, and June 29, 2004, it was zoned AG/F by Clackamas County and subject to the current lot size and dwelling standards under Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, and as described in Section V.(2) of this report.

In addition to the applicable provisions of Goals 3 and 4 and ORS 215 in effect when Margaret Hoffman acquired a 19.17-acre portion of tax lot 1500 on July 22, 1993, and applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, in effect when Margaret Hoffman acquired the remaining 34.97-acre portion of tax lot 1500 on December 30, 1999, and June 29, 2004, there may be other laws that apply to the claimants' use of the property that have not been identified in the claim.

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 finds that Robert Hoffman's claim for tax lots 1500 and 1502 is not valid because he is not an owner of these tax lots. Therefore, the department recommends that Robert Hoffman's claim for tax lots 1500 and 1502 be denied.

The department further recommends that the claim otherwise 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 Margaret Hoffman's division of the 184.14-acre subject property into one- to five-acre parcels and to her development a dwelling on the resulting undeveloped parcels, as follows:

Claimant:	Margaret Hoffman		
Tax Lot:	1200	1500	1502
Acquisition Date:	November 21, 1988	November 1, 1954 (90.8 acres); July 22, 1993 (19.17 acres); December 30, 1999 (7.71 acres) and June 29, 2004 (27.26 acres)	November 1, 1954
Laws That Will Not Apply:	Applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after November 21, 1988	Applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after November 1, 1954, July 22, 1993, December 30, 1999, or June 29, 2004 (as applicable based on the acquisition dates identified above)	Applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after November 1, 1954

The above laws will not apply to Margaret Hoffman for the use described in this report, and only to the extent that use was permitted at the time she acquired each portion of each tax lot that composes the subject property. The department acknowledges that the relief to which Margaret Hoffman is entitled under ORS 197.352 will not allow her to use a 34.97-acre portion of tax lot 1500 acquired on December 30, 1999, and June 29, 2004, in the manner set forth in the claim.

Further, in lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Robert Hoffman's division of the tax lot 1200 into one- to five-acre parcels and to his development of a dwelling on the resulting undeveloped parcels, as follows.

Claimant:	Robert Hoffman
Tax Lot:	1200
Acquisition Date:	November 21, 1988
Laws That Will Not Apply:	Applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after November 21, 1988

The above laws will not apply to Robert Hoffman only to the extent necessary to allow him to use tax lot 1200 for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 1200.

2. The action by the State of Oregon provides the state's authorization to Margaret Hoffman to use the property for the use described in this report, subject to the standards in effect on November 1, 1954, for tax lot 1502 and a 90.8-acre portion of tax lot 1500; November 21, 1988, for tax lot 1200; July 22, 1993, for a 19.17-acre portion of tax lot 1500; December 30, 1999, for a 7.71-acre portion of tax lot 1500; and June 29, 2004, for a 27.26-acre portion of tax lot 1500. The action by the State of Oregon also provides the state's authorization to Robert Hoffman to use the property for the use described in this report, subject to the standards in effect on November 21, 1988, for tax lot 1200. On November 21, 1988, tax lot 1200 was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Clackamas County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect. On July 22, 1993, a 19.17-acre portion of tax lot 1500 was to compliance with Goals 3 and 4 and ORS 215 then in effect. On December 30, 1999, and June 29, 2004, a 34.97-acre portion of tax lot 1500 was subject to applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, 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 October 12, 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.