

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

IN THE MATTER OF THE CLAIM FOR)	FINAL ORDER A
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M129356
(BALLOT MEASURE 37) OF)	
Ardell J. Goeden CLAIMANT)	

Claimant: Ardell J. Goeden (the Claimant)

Property: Township 2N, Range 3W, Sections 23 and 24, Tax lots 1602

Township 2N, Range 3W, Section 36, Tax lot 200

Washington 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 (a) Ardell and Carol Goeden's division of tax lot 200 into one-acre parcels and to their development of a dwelling on each parcel; (b) Carol Goeden's division of tax lot 1600 into one-acre parcels and to her development of a dwelling on each parcel; and (c) Ardell Goeden's division of tax lot 1602 into one-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 each claimant acquired the subject tax lots. These 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 on September 25, 1956, when Carol Goeden acquired the portion of tax lot 1600 located in Section 23 on December 12, 1969, and the portion located in Section 24 on January 3, 1984, and

when Ardell Goeden acquired the portion of tax lot 1602 located in Section 23 on December 12, 1969, and the portion located in Section 24 on January 3, 1984.

2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lot 200 for the use described in this report, subject to the standards in effect on September 25, 1956; to Carol Goeden to use tax lot 1600 for the use described in this report, subject to the standards in effect on December 12, 1969, when she acquired the portion of this tax lot located in Section 23, and on January 3, 1984, when she acquired the portion located in Section 24; and to Ardell Goeden to use tax lot 1602 for the use described in this report, subject to the standards in effect on December 12, 1969, when he acquired the portion of this tax lot located in Section 23, and on January 3, 1984, when he acquired the portion located in Section 24. On January 3, 1984, the property was subject to the provisions of Goals 3 and 14, ORS 215, and OAR 660, division 5, then in effect.

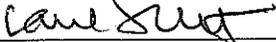
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants 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.

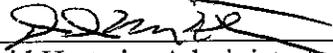
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352,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

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD
Dated this 8th day of November, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 8th day of November, 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. M129356
(BALLOT MEASURE 37) OF)	
Carol J. Goeden, CLAIMANT)	

Claimant: Carol J. Goeden (the Claimant)

Property: Township 2N, Range 3W, Sections 23 and 24, Tax lots 1600

Township 2N, Range 3W, Section 36, Tax lot 200

Washington 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 (a) Ardell and Carol Goeden's division of tax lot 200 into one-acre parcels and to their development of a dwelling on each parcel; (b) Carol Goeden's division of tax lot 1600 into one-acre parcels and to her development of a dwelling on each parcel; and (c) Ardell Goeden's division of tax lot 1602 into one-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 each claimant acquired the subject tax lots. These 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 on September 25, 1956, when Carol Goeden acquired the portion of tax lot 1600 located in Section 23 on December 12, 1969, and the portion located in Section 24 on January 3, 1984, and

when Ardell Goeden acquired the portion of tax lot 1602 located in Section 23 on December 12, 1969, and the portion located in Section 24 on January 3, 1984.

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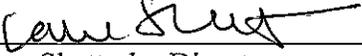
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4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or 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 8th day of November, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 8th day of November, 2006.

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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

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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 C
COMPENSATION UNDER ORS 197.352) CLAIM NO. M129356
(BALLOT MEASURE 37) OF)
Ardell J. Goeden, CLAIMANT)

Claimant: Ardell J. Goeden (the Claimant)

Property: Township 2N, Range 3W, Sections 23 and 24, Tax lots 1600
Washington County (the property)

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

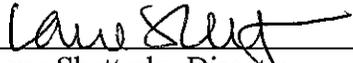
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, 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.

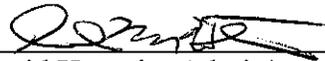
FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD

Dated this 8th day of November, 2006.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 8th day of November, 2006.

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IN THE MATTER OF THE CLAIM FOR) FINAL ORDER D
COMPENSATION UNDER ORS 197.352) CLAIM NO. M129356
(BALLOT MEASURE 37) OF)
Carol J. Goeden, CLAIMANT)

Claimant: Carol J. Goeden (the Claimant)

Property: Township 2N, Range 3W, Sections 23 and 24, Tax lots 1602
Washington County (the property)

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

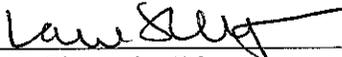
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ORDER

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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.

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

November 8, 2006

STATE CLAIM NUMBER: M129356

NAMES OF CLAIMANTS: Ardell J. Goeden
Carol J. Goeden

MAILING ADDRESS: 12650 NW Old Pumpkin Ridge Road
North Plains, Oregon 97133

PROPERTY IDENTIFICATION: Township 2N, Range 3W, Sections 23 and 24
Tax lots 1600 and 1602

Township 2N, Range 3W, Section 36
Tax lot 200

Washington County

OTHER CONTACT INFORMATION: Donald B. Bowerman
PO Box 100
Oregon City, Oregon 97045

DATE RECEIVED BY DAS: May 18, 2006

180-DAY DEADLINE: November 14, 2006

I. SUMMARY OF CLAIM

The claimants, Ardell and Carol Goeden, seek compensation in the amount of \$20,666,040 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 153.01-acre subject property into one-acre parcels and to develop a dwelling on each parcel.¹ Tax lot 200 is located at 1633 and 16248 NW Old Pumpkin Ridge Road, and tax lots 1600 and 1602 are located adjacent to Old Pumpkin Ridge Road. All of the tax lots are located near North Plains, in Washington County. (See claim.)

¹ The subject property consists of three tax lots. Tax lot 200 includes 110.3 acres; tax lot 1600 includes 22.95 acres; and tax lot 1602 includes 19.76 acres. Tax lots 1600 and 1602 are not contiguous to tax lot 200.

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 (a) Ardell and Carol Goeden's division of tax lot 200 into one-acre parcels and to their development of a dwelling on each parcel; (b) Carol Goeden's division of tax lot 1600 into one-acre parcels and to her development of a dwelling on each parcel; and (c) Ardell Goeden's division of tax lot 1602 into one-acre parcels and to his development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33. These 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 both acquired tax lot 200 on September 25, 1956, when Carol Goeden acquired the portion of tax lot 1600 located in Section 23 on December 12, 1969, and the portion located in Section 24 on January 3, 1984, and when Ardell Goeden acquired the portion of tax lot 1602 located in Section 23 on December 12, 1969, and the portion located in Section 24 on January 3, 1984.

The department has also determined that this claim is not valid in part because Ardell Goeden is not a present owner of tax lot 1600 and Carol Goeden is not a present owner of tax lot 1602. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On September 8, 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 May 18, 2006, for processing under OAR 125, division 145. The claim identifies as the basis of the claim “all land use regulations that restrict development including but not limited to Senate Bill 100 (1973) and all regulatory enactments pursuant thereto and adopted thereafter including but not limited to House Bill 3661, ORS Chapters 197”; ORS 215; and OAR 660, divisions 6, and 33. 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, Ardell and Carol Goeden, acquired tax lot 200 on September 25, 1956, as reflected by a land sale contract and fulfillment deed included with the claim. The claimants acquired tax lots 1600 and 1602 (located in Section 23) on December 12, 1969, as reflected by a land sale contract included with the claim.² On January 3, 1984, the claimants acquired the property contiguous to tax lots 1600 and 1602 (located in Section 24), as reflected by a bargain and sale deed included with the claim. A Washington County lot area variance incorporated the newly acquired portion of the property into tax lots 1600 and 1602. The claimants conveyed tax lot 1600 to Carol Goeden on November 19, 1996, as reflected by a correction deed dated June 20, 1997. The claimants conveyed tax lot 1602 to Ardell Goeden on July 18, 1985, as reflected by a deed included with the claim. The Washington County Assessor’s Office confirms the claimants’ current ownership of tax lot 200, Carol Goeden’s current ownership of tax lot 1600 and Ardell Goeden’s current ownership of tax lot 1602.

Conclusions

The claimants, Ardell and Carol Goeden, are “owners” of tax lot 200 as that term is defined by ORS 197.352(11)(C), as of September 25, 1956. Carol Goeden is an “owner” of that portion of tax lot 1600 located in Section 23, as of December 12, 1969, and is an “owner” of that portion of tax lot 1600 located in Section 24, as of January 3, 1984. Ardell Goeden is an “owner” of that portion

² The land sale contract through which the claimants acquired tax lots 1600 and 1602 in 1969 reserved two life estates, which were limited to use of the two existing residences on the subject property and did not deprive the claimants of the right to use the subject property.

of tax lot 1602 located in Section 23, as of December 12, 1969, and is an “owner” of that portion of tax lot 1600 located in Section 24, as of as of January 3, 1984. Ardell Goeden is not a present “owner” of tax lot 1600, and Carol Goeden is not a present “owner” of tax lot 1602.

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 153.01-acre subject property into one-acre parcels and to develop a dwelling on each parcel. It indicates that current state land use laws prevent the desired use.³

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. Tax lot 200 is zoned by Washington County as EFU and tax lots 1600 and 1602 are zoned by Washington County as Agricultural and Forestry (AF-20), as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because these tax lots are “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 215.213, 215.263 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land in marginal lands counties into parcels less than 80 acres and establish standards for 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 in a marginal lands county under ORS 215.213. OAR 660-033-0130(4)(e) (applicable to non-farm dwellings in marginal lands counties) became effective on August 7, 1993. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on

³ The claimants summarily cite numerous state land use laws as the basis for the claim; however, excepting Goals 3 and 14, ORS 215 and OAR 660, division 33, the claimants do not establish how the cited laws either apply to the claimants’ desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, the laws either do not apply to the claimants’ property or do not restrict the claimants’ desired use of the property with the effect of reducing its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants’ use of the subject property, based on the claimants’ asserted desired use.

⁴ These tax lots are “agricultural land” because they contain Natural Resources Conservation Service Class I–IV soils.

January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

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

The claimants acquired tax lot 200 on September 25, 1956, and those portions of tax lots 1600 and 1602 located in Section 23 on December 12, 1969, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

The claimants acquired portions of tax lots 1600 and 1602 located in Section 24 on January 3, 1984, after the adoption of the statewide planning goals, but before the Commission acknowledged Washington 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 these portions of the subject property, the statewide planning goals, and Goal 3 in particular, applied directly to these portions when the claimants acquired them.⁵

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 (1983 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 the portions of tax lots 1600 and 1602 located in Section 24 when they acquired them in 1984 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 January 3, 1984, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1983 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1983 edition).

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 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).

No information has been presented in the claim to establish that the claimants' desired use of the portions of tax lots 1600 and 1602 located in Section 24 complies with the "commercial" standard for farm parcels under Goal 3 or the standards for non-farm parcels under ORS 215.263 (1983 edition), nor is there any information to establish that the claimants' desired development of dwellings on these portions of the subject property satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1983 edition).

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimants acquired tax lot 200 in 1956, and tax lots 1600 and 1602 in 1969 and 1984, and do not allow the desired division or residential development of the subject property. These laws restrict the use of tax lot 200 and the portions of tax lots 1600 and 1602 located in Section 23 relative to the uses allowed when the claimants acquired these portions of the property. However, the claim does not establish whether or the extent to which the claimants' desired use of the portions of tax lots 1600 and 1602 located in Section 24 and acquired in 1984, complies with the standards for land divisions and development under the requirements of Goal 3 and ORS 215 in effect when these portions were acquired on January 3, 1984.

As explained in Section V.(1), Ardell Goeden is not a present "owner" of tax lot 1600, and Carol Goeden is not a present "owner" of tax lot 1602, as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict Ardell Goeden's use of tax lot 1600 or Carol Goeden's use of tax lot 1602, with the effect of reducing the fair market value of these portions of the subject property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the use that the claimants have identified. There may be other laws that currently apply to the claimants' use of the subject property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of 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 \$20,666,040 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' assessment of the value of each one-acre homesite at \$150,000 per acre, multiplied by 100 homesites for tax lot 200, which equals \$15,000,000, minus the current real market value with restrictions at \$78,390 for a total of \$14,921,610 for tax lot 200, and

multiplied by 40 homesites for tax lots 1600 and 1602, which equals \$6,000,000, minus the current real market value with restrictions at \$250,570 for a total of \$5,744,430 for tax lots 1600 and 1602.

Conclusions

As explained in Section V.(1) of this report, the claimants are Ardell and Carol Goeden who acquired tax lot 200 on September 25, 1956, portions of tax lots 1600 and 1602 located in Section 23 on December 12, 1969, and portions of tax lots 1600 and 1602 located in Section 24 on January 3, 1984. Ardell Goeden has conveyed his interest in tax lot 1600 to Carol Goeden, and Carol Goeden has conveyed her interest in tax lot 1602 to Ardell Goeden. Accordingly, they are each not entitled to compensation under ORS 197.352 for that portion of the subject property they no longer own. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the portions of the subject property that they each presently own and have the effect of reducing their fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants acquired tax lot 200, Carol Goeden acquired tax lot 1600 and Ardell Goeden acquired tax lot 1602, restrict their desired use. The claimants estimate that the effect of the regulations on the fair market value of the property is a reduction of \$20,666,040.

Without an appraisal or other documentation and without verification of whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when they each acquired the property, 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.

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 14, ORS 215 and OAR 660, division 33, which Washington County has implemented through its current EFU and AF-20 zones. With the exception of the provisions of Goals 3 and 14, ORS 215 and OAR 660 in effect when the claimants each acquired the portions of tax lots 1600 and 1602 located in Section 24 in 1984, all of these land use regulations were enacted or adopted after the claimants acquired the subject property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that with the exception of provisions of Goals 3 and 14, ORS 215 and OAR 660 in effect when the claimants acquired the portions of tax lots 1600 and 1602 located in Section 24 in 1984, the general statutory,

goal and rule restrictions on division and development of the claimants' property were not in effect when they each acquired the subject property in 1956, 1969 and 1984. As a result, these laws are not exempt under ORS 197.352(3)(E). Provisions of Goals 3 and 14, ORS 215 and OAR 660 in effect when the claimants acquired the portions of tax lots 1600 and 1602 located in Section 24 in 1984 are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimants acquired the property.

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

As explained in Section V.(1) of this report, Ardell Goeden is not a present "owner" of tax lot 1600, and Carol Goeden is not a present "owner" of tax lot 1602, 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 Ardell Goeden for tax lot 1600 and not relevant to Carol Goeden for tax lot 1602.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the use that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced laws that restrict the use of the subject property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the subject property permitted at the time the 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, the department finds that laws enforced by the Commission or the department do not restrict Carol Goeden's use of tax lot 1602 or Ardell Goeden's use of tax lot 1600 because Carol Goeden is not a present owner of tax lot 1602 and Ardell Goeden is not a present owner of tax lot 1600. The department finds that laws enforced by the Commission or the department otherwise restrict the claimants' desired use of the property each claimant presently owns. 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 \$20,666,040. 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 they 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 Ardell and Carol Goeden to use tax lot 200 for a use permitted at the time they acquired this tax lot on September 25, 1956; to allow Carol Goeden to use tax lot 1600 for a use permitted at the time she acquired the portion of tax lot 1600 located in Section 23 on December 12, 1969, and the portion located in Section 24 on January 3, 1984; and to allow Ardell Goeden to use tax lot 1602 for a use permitted at the time he acquired the portion of tax lot 1602 located in Section 23 on December 12, 1969, and the portion located in Section 24 on January 3, 1984.

Conclusions

Based on the record before the department, Ardell Goeden has not established that he is entitled to relief under ORS 197.352(1) for tax lot 1600 and Carol Goeden has not established that she is entitled to relief under ORS 197.352(1) for tax lot 1602 as a result of land use regulations enforced by the Commission or the department because Ardell Goeden is not an owner of tax lot 1600 and Carol Goeden is not an owner of tax lot 1602. Therefore, the department recommends that this claim be denied in part.

The department otherwise 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 (a) Ardell and Carol Goeden's division of tax lot 200 into one-acre parcels and to their development of a dwelling on each parcel; (b) Carol Goeden's division of tax lot 1600 into one-acre parcels and to her development of a dwelling on each parcel; and (c) Ardell Goeden's division of tax lot 1602 into one-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 each claimant acquired the subject tax lots. These 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 on September 25, 1956, when Carol Goeden acquired the portion of tax lot 1600 located in Section 23 on December 12, 1969, and the portion located in Section 24 on January 3, 1984, and when Ardell Goeden acquired the portion of tax lot 1602 located in Section 23 on December 12, 1969, and the portion located in Section 24 on January 3, 1984.
2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lot 200 for the use described in this report, subject to the standards in effect on September 25, 1956; to Carol Goeden to use tax lot 1600 for the use described in this report, subject to the

standards in effect on December 12, 1969, when she acquired the portion of this tax lot located in Section 23, and on January 3, 1984, when she acquired the portion located in Section 24; and to Ardell Goeden to use tax lot 1602 for the use described in this report, subject to the standards in effect on December 12, 1969, when he acquired the portion of this tax lot located in Section 23, and on January 3, 1984, when he acquired the portion located in Section 24. On January 3, 1984, the property was subject to the provisions of Goals 3 and 14, ORS 215, and OAR 660, division 5, 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 19, 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.