

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. M129465
(BALLOT MEASURE 37) OF)	
Margaret R. Barker, Steven E. Barker, Gregory A. Barker,)	
Sandra J. Baker and Nancy Sue Miller, CLAIMANTS)	

Claimants: Margaret R. Barker, Steven E. Barker, Gregory A. Barker, Sandra J. Baker and Nancy Sue Miller (the Claimants)

Property: Township 1N, Range 1W, Section 8D, Tax lots 400 and 600 (Parcel 1)
Multnomah County (the Property)

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

Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to the Barker family's division of tax lots 400 and 600 into two-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after December 27, 1988. 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 acquired the property on December 27, 1988. The department acknowledges that it is unlikely that the claimants' desired division and development of the property would have been permitted at the time they acquired tax lots 400 and 600.
2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lots 400 and 600 for the use described in this report, subject to the standards in effect on December 27, 1988. On that date, the property was subject to compliance with Goal 3 and OAR

660, division 5, as implemented by Multnomah County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lots 400 and 600 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 tax lots 400 and 600 imposed by private parties.

4. Any use of tax lots 400 and 600 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).

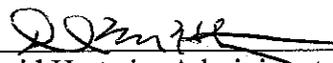
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use tax lots 400 and 600, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable 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 tax lots 400 and 600 by the claimants.

This Order is entered by the Deputy 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


Cora R. Parker, Deputy Director
DLCD
Dated this 30th day of November, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 30th 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
COMPENSATION UNDER ORS 197.352)CLAIM NO. M129465
(BALLOT MEASURE 37) OF)
Margaret R. Barker, Steven E. Barker, Gregory A. Barker,)
Sandra J. Baker and Nancy Sue Miller, CLAIMANTS)

Claimant(s): Margaret R. Barker, Steven E. Barker, Gregory A. Barker, Sandra J. Baker
and Nancy Sue Miller (the Claimants)

Property: Township 1N, Range 1W, Section 8C: tax lot 500 (Parcel 2)
Multnomah County (the property)

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

Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under
OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred
the Claim to the Department of Land Conservation and Development (DLCD) as the
regulating entity. This order is based on the record herein, including the Findings and
Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the
DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by DLCD and the Land Conservation and
Development Commission (LCDC) for the reasons set forth in the DLCD Report.

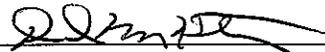
This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and
the Land Conservation and Development Commission under ORS 197.352, OAR 660-
002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State
Services Division of the DAS as a final order of DAS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


Cora R. Parker, Deputy Director
DLCD

Dated this 30th day of November, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 30th day of November, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to the following judicial remedies:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, 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**

November 30, 2006

STATE CLAIM NUMBER: M129465

NAMES OF CLAIMANTS: Margaret R. Barker
Steven E. Barker
Gregory A. Barker
Sandra J. Baker
Nancy Sue Miller

MAILING ADDRESS: Margaret R. Barker
16554 NW Comadrona Lane
Portland, Oregon 97229

Steven E. Barker
19 Rivercoach Lane
Sugar Land, Texas 77479

Sandra J. Baker
13493 NW Countryview Way
Portland, Oregon 97229

Nancy Sue Miller
80475 South Valley Road
Dufur, Oregon 97021

Gregory A. Barker
650 SW Meadow Drive #117
Beaverton, Oregon 97006

PROPERTY IDENTIFICATION: Township 1N, Range 1W
Section 8D: tax lots 400 and 600 (Parcel 1)
Section 8C: tax lot 500 (Parcel 2)
Multnomah County

DATE RECEIVED BY DAS: June 6, 2006

180-DAY DEADLINE: December 3, 2006

I. SUMMARY OF CLAIM

The claimants, Margaret, Steven and Gregory Barker, Sandra Baker and Nancy Miller (hereinafter referred to as the Barker family), seek compensation in the amount of \$36,849,730 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 62.12-acre subject property into two-acre parcels and to develop a dwelling on each parcel.¹ The subject property is located at the geographic coordinates listed above, in Multnomah 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 the Barker family's division of tax lots 400 and 600 into two-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after December 27, 1988. 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 acquired the property on December 27, 1988. The department acknowledges that it is unlikely that the claimants' desired division and development of the property would have been permitted at the time they acquired tax lots 400 and 600.

The department has further determined that this claim is not valid as to tax lot 500 because the claimants have not established their ownership of the property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 12, 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, three written comments were received in response to the 10-day notice.

The comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the 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.)

¹ The subject property includes three tax lots. Tax lot 400 consists of 36.98 acres, tax lot 600 consists of 0.38 acre, and tax lot 500 consists of 24.76 acres.

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 June 6, 2006, for processing under OAR 125, division 145. The claim identifies Goal 14 (Urbanization); ORS 215.263, 215.780 and 215.283; and OAR 660, divisions 11, 15, and 33, as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

The claimants, the Barker family, first acquired an interest in the subject property from Barker Investment Company on December 27, 1988, as reflected by bargain and sale deeds included with the claim.² The claimants’ grandparents, Kendal and Rose Barker, acquired tax lots 400 and 600 on November 28, 1904, as reflected by a deed included with the claim.

² The claimants assert ownership of the subject property as of the date each claimant was born during the 1950s as partners of the Barker Investment Company. However, the Barker Investment Company is not a claimant or a current owner, and in any event, the claimants have not established their ownership interest in the company as of their dates of birth.

On September 10, 2002, the claimants transferred all of their individual interest in tax lot 500 to Barker Investment Five, as reflected by bargain and sale deeds included with the claim. The Multnomah County Assessor's Office confirms the Barker family's current ownership of tax lots 400 and 600 and Barker Investment Five's current ownership of tax lot 500. The individual members of the Barker family no longer own tax lot 500.

Conclusions

The individuals of the Barker family are "owners" of tax lots 400 and 600 as that term is defined by ORS 197.352(11)(C), as of December 27, 1988. The individuals of the Barker family are not "owners" of tax lot 500 as that term is defined in ORS 197.352(11)(C). Kendal and Rose Barker are the claimants' "family members," as defined by ORS 197.352(11)(A), and acquired tax lots 400 and 600 on November 28, 1904.

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 62.12-acre subject property into two-acre parcels and to develop a dwelling on each parcel, and that current land use regulations 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. The claimants' property is zoned EFU by Multnomah County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.⁴ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

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

³ The claimants summarily cite numerous state land use laws as applicable to this claim, but do not establish how the 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, most of the regulations either do not apply to the claimants' desired use of the property or do not restrict the claimants' desired use of the property with the effect of reducing its fair market value. In particular, the claimants generally cite Goal 14 and OAR 660, divisions 11, and 15. However, they have not established how those regulations apply to or restrict their desired use of the property. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' desired use of the subject property, based on the claimants' description of their desired use.

⁴ The claimants' property is "agricultural land" because it contains National Resources Conservation Service Class I-IV soils.

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

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

The claimants' family first acquired tax lots 400 and 600 in 1904, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to tax lots 400 and 600 in 1904.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimants' family acquired tax lots 400 and 600. These laws restrict the use of tax lots 400 and 600 relative to the uses allowed when the claimants' family acquired these tax lots.

As explained in Section V.(1), the individuals of the Barker family are not "owners" of tax lot 500 as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Land Conservation and Development Commission (the Commission) or the department restrict the claimants' use of private real property with the effect of reducing the fair market value of the property.

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 \$36,849,730 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' comparison of similar properties in the surrounding area.

Conclusions

As explained in Section V.(1) of this report, the claimants are individuals of the Barker family, whose family members acquired tax lots 400 and 600 in 1904. As explained in Section V.(1) of this report, the individuals of the Barker family are not "owners" of tax lot 500 as that term is

defined in ORS 197.352(11)(C). Therefore, no laws restrict the Barker family's use of tax lot 500 with the effect of reducing the fair market value of the property. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of tax lots 400 and 600 and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants' family acquired tax lots 400 and 600 restrict the claimants' desired use of these tax lots. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$36,849,730.

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 tax lots 400 and 600. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of tax lots 400 and 600 has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the claimants' family acquired these tax lots.

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 tax lots 400 and 600 relative to the uses permitted when the claimants' family acquired these tax lots, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Multnomah County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after the claimants' family acquired tax lots 400 and 600.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of tax lots 400 and 600 were in effect when the claimants' family acquired these tax lots on November 28, 1904. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimants' family acquired tax lots 400 and 600 are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

As explained in Section V.(1) of this report, the individuals of the Barker family are not "owners" of tax lot 500 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 as to that tax lot.

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 record, the department finds that the claim is not valid as to tax lot 500 because the individuals of the Barker family are not owners of the tax lot. The department further finds laws enforced by the Commission or the department restrict the claimants' desired use of tax lots 400 and 600. 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 property by \$36,849,730. 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 tax lots 400 and 600, 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 tax lots 400 and 600 was allowed under the standards in effect when the claimants' family acquired these tax lots. 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 tax lots 400 and 600 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 the individuals of the Barker family to use tax lots 400 and 600 for a use permitted at the time they acquired these tax lots on December 27, 1988.

At the time the Barker family acquired tax lots 400 and 600, the tax lots were subject to Multnomah County's acknowledged EFU zone.⁵ When the Barker family acquired tax lots 400 and 600, the claimants' desired use of the property would have been governed by the county's acknowledged EFU zone and the applicable provisions of ORS 215 then in effect.⁶ 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

⁵ When Multnomah County's EFU zone was acknowledged by the Commission for compliance with Goal 3 on November 6, 1980, tax lots 400 and 600 were zoned F-2, which allowed a 20-acre minimum lot size for new lots and parcels.

⁶ 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).

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 lots 400 and 600 were allowed under the standards in effect when the individuals of the Barker family acquired these tax lots on December 27, 1988. The department acknowledges that it is unlikely that the claimants' desired division and development of the property would have been permitted at the time they acquired tax lots 400 and 600.

In addition to the applicable provisions of Goal 3, ORS 215 and OAR 660 in effect on December 27, 1988, and other laws in effect when the claimants acquired tax lots 400 and 600, 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 uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in 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 before the department, the individuals of the Barker family have not established that they are entitled to relief for tax lot 500 under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because they are not owners of this tax lot. Therefore, the department recommends that this claim be denied as to tax lot 500. The department further recommends that the claim be approved as to tax lots 400 and 600, 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 the Barker family's division of tax lots 400 and 600 into two-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after December 27, 1988. 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 acquired the property on December 27, 1988. The department acknowledges that it is unlikely that the claimants' desired division and development of the property would have been permitted at the time they acquired tax lots 400 and 600.
2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lots 400 and 600 for the use described in this report, subject to the standards in effect on December 27, 1988. On that date, the property was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Multnomah County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lots 400 and 600 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 tax lots 400 and 600 imposed by private parties.

4. Any use of tax lots 400 and 600 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 tax lots 400 and 600, 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 tax lots 400 and 600 by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on November 7, 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. No comments were received.