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 Olof and Mary E. Hallstrom, CLAIMANTS	))))	FINAL ORDER CLAIM NO. M129583

Claimants: Olof and Mary E. Hallstrom (the Claimants)

Property: Township 2S, Range 10W, Section 12, Tax lots 100 and 400

Township 2S, Range 10W, Section 1, Tax lot 2200

Tillamook 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 Olof and Mary Hallstrom's division of 137.66 acres of the subject property, consisting of tax lots 100 and 2200, into parcels of no less than 0.5-acre or to their development of a dwelling on each parcel: applicable provisions of Goal 3, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use tax lots 100 and 2200 for the use described in this report, and only to the extent that use was permitted when they acquired these tax lots on February 21, 1951.

2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lots 100 and 2200 for the use described in this report, subject to the standards in effect on February 21, 1951.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lots 100 and 2200 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 tax lots 100 and 2200 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 100 and 2200, 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 100 and 2200 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 21st day of December, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 21st day of December, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.

2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

December 21, 2006

STATE CLAIM NUMBER:	M129583
NAMES OF CLAIMANTS:	Olof and Mary E. Hallstrom
MAILING ADDRESS:	1920 Hallstrom Road Tillamook, Oregon 97141
PROPERTY IDENTIFICATION:	Township 2S, Range 10W, Section 12 Tax lots 100 and 400 Township 2S, Range 10W, Section 1 Tax lot 2200 Tillamook County
OTHER CONTACT INFORMATION:	Kevin M. Pike 19602 Derby Ct. West Linn, Oregon 97068
DATE RECEIVED BY DAS:	June 27, 2006
180-DAY DEADLINE:	December 24, 2006

I. SUMMARY OF CLAIM

The claimants, Olof and Mary Hallstrom, seek compensation in the amount of $4 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 142.66-acre subject property, consisting of tax lots 100, 400 and 2200, into 100 parcels as small as 0.5-acre and to develop a dwelling on each parcel. The subject property is located at 1900 Hallstrom Road, near Tillamook, in Tillamook County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Olof and Mary Hallstrom's division of 137.66 acres of the subject property, including tax lots 100 and 2200, into parcels of no less than 0.5-acre and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands), 4 (Forest Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules

(OAR) 660, divisions 6, and 33. These laws will not apply to the claimants only to the extent necessary to allow them to use tax lots 100 and 2200 for the use described in this report, and only to the extent that use was permitted when they acquired these tax lots on February 21, 1951.

The department has further determined that the claim is not valid for the five-acre portion of the subject property consisting of tax lot 400 because Olof Hallstrom is not an owner of the tax lot and because Mary Hallstrom's desired use the property was prohibited under the laws in effect when she acquired tax lot 400 in 1995. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 18, 2006, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, one written comment was received in response to the 10-day notice.

The comment is relevant to whether the claimants are owners of a portion of the subject property. The comment has been considered by the department in preparing this report. Otherwise, the comment does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letter in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

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

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

2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on June 27, 2006, for processing under OAR 125, division 145. The claim identifies Tillamook County farm and forest zoning as the basis for the

claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

The claimants, Olof and Mary Hallstrom, acquired the portion of the subject property, consisting of tax lots 100 and 2200, on February 21, 1951, as reflected by the deed included with the claim. Mary Hallstrom acquired the portion of the subject property, consisting of tax lot 400, on May 31, 1995, as reflected by the declaration of revocable trust for the Mary E. Hallstrom Trust and a copy of a warranty deed from Steven Alfred Hallstrom to the Revocable Trust of Mary E. Hallstrom, both included with the claim. Mary Hallstrom is the sole trustee for the Mary E. Hallstrom Revocable Trust. The Tillamook County Assessor's Office confirms the claimants' current ownership of tax lots 100 and 2200 and Mary Hallstrom's current ownership of tax lot 400.

Conclusions

The claimants, Olof and Mary Hallstrom, are "owners" of tax lots 100 and 2200, as that term is defined by ORS 197.352(11)(C), as of February 21, 1951. Mary Hallstrom is an "owner" of tax lot 400, as that term is defined by ORS 197.352(11)(C), as of May 31, 1995. Olof Hallstrom is not an owner of tax lot 400 as that term is defined by ORS 197.352(11)(C).

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 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 142.66-acre property into 100 parcels as small as 0.5-acre and to develop a dwelling on each parcel. It also indicates the property's current zoning prevents that desired use.

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

A portion of the claimants' property is zoned Farm (F-1) by Tillamook County, as required by Goal 3 in accordance with ORS 215 and OAR 660, division 33, because a portion of their property is "agricultural land," as defined by Goal 3.[1] 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.

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.)

Another portion of the claimants' property is zoned Forest (F) by Tillamook County, as required by Goal 4 in accordance with ORS 215 and OAR 660, division 6, because a portion of their property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

Goal 14, which also became effective on 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 of urban growth boundaries be used for rural uses.

---

[1] A portion of the subject property is "agricultural land" because it contains Natural Resources Conservation Service Class I–IV soils.

The claimants acquired tax lots 100 and 2200 on February 21, 1951, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. Mary Hallstrom acquired tax lot 400 on May 31, 1995. At that time, tax lot 400 was subject to the laws currently in effect, as described above.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33, were all enacted or adopted after the claimants acquired tax lots 100 and 2200 in 1951, and do not allow the desired division or residential development of these tax lots. These laws restrict the use of tax lots 100 and 2200 relative to the uses allowed when the claimants acquired them.

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, division 33, were all enacted or adopted before Mary Hallstrom acquired tax lot 400 on May 31, 1995, and do not allow the claimants' desired use of this tax lot. Laws enacted or adopted since the Mary Hallstrom acquired tax lot 400 in 1995 do not restrict the claimants' desired use of the property relative to when she acquired it in 1995.

Claimant Olof Hallstrom is not an owner of tax lot 400, and therefore, no state land use regulations restrict his use of this tax lot.

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. 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 $4 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 the claimants' assessment of the property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Olof and Mary Hallstrom who acquired tax lots 100 and 2200 on February 21, 1951. Mary Hallstrom acquired tax lot 400 on

May 31, 1995. Mary Hallstrom is not entitled to compensation under ORS 197.352 for tax lot 400 because no state land use laws enacted or adopted since Mary Hallstrom acquired tax lot 400 restrict the use of the tax lot relative to uses allowed when she acquired it. Therefore, the fair market value of tax lot 400 has not been reduced as a result of regulations enforced by the Commission or the department. Olof Hallstrom is not entitled to compensation under ORS 197.352 for tax lot 400 because he is not an owner of the tax lot.

Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of tax lots 100 and 2200 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 lots 100 and 2200 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 $4 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 tax lots 100 and 2200. Nevertheless, based on the evidence in the record for this claim, the department has determined that the fair market value of tax lots 100 and 2200 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, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33, which Tillamook County has implemented through its current F-1 and F zones. All of these land use regulations were enacted or adopted after the claimants acquired tax lots 100 and 2200 and before Mary Hallstrom acquired tax lot 400.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on division and development tax lots 100 and 2200 were in effect when the claimants acquired them in 1951. As a result, these laws are not exempt under ORS 197.352(3)(E) as to tax lots 100 and 2200. All of these regulations were in effect when Mary Hallstrom acquired tax lot 400 in 1995, and therefore, all are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimants acquired the property. Olof Hallstrom is not an owner of tax lot 400, and therefore, the issue of whether any laws are exempt is not relevant to him as to tax lot 400.

Laws in effect when the claimants acquired tax lots 100 and 2200 and when Mary Hallstrom acquired tax lot 400 are 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 tax lots 100 and 2000 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 of tax lots 100 and 2200, 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).

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 tax lots 100 and 2200.

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, Olof Hallstrom is not an owner of tax lot 400 and therefore, is not entitled to relief under ORS 197.352 as to this tax lot. Laws enforced by the Commission or the department do not restrict Mary Hallstrom's desired use of tax lot 400 relative to what was permitted when she acquired this tax lot in 1995 and do not reduce the fair market value of the tax lot. All state laws restricting the use of tax lot 400 are exempt under ORS 197.352(3)(E).

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 tax lots 100 and 2200. 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 $4 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 tax lots 100 and 2200, 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 100 and 2200 was allowed under the standards in effect when they 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 100 and 2200 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 Olof and Mary Hallstrom to use tax lots 100 and 2200 for a use permitted at the time they acquired these tax lots on February 21, 1951.

Conclusions

Based on the record and the foregoing findings and conclusions, the claimants have not established that they are entitled to relief under ORS 197.352(1) for tax lot 400 as a result of land use regulations enforced by the Commission or the department because Olof Hallstrom is not an owner of that the lot, and because the claimants' desired use of the tax lot was prohibited under the laws in effect when Mary Hallstrom acquired it in 1995. Therefore, the department recommends that this claim be denied for tax lot 400.

Based on the record, the department recommends that the claim be approved for tax lots 100 and 2200, 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 Olof and Mary Hallstrom's division of 137.66 acres of the subject property, consisting of tax lots 100 and 2200, into parcels of no less than 0.5-acre or to their development of a dwelling on each parcel: applicable provisions of Goal 3, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use tax lots 100 and 2200 for the use described in this report, and only to the extent that use was permitted when they acquired these tax lots on February 21, 1951.

2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lots 100 and 2200 for the use described in this report, subject to the standards in effect on February 21, 1951.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lots 100 and 2200 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 tax lots 100 and 2200 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 100 and 2200, 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 100 and 2200 by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on November 28, 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.