

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. M118472  
(BALLOT MEASURE 37) OF )  
Kaye and Mary Lou Nichols, CLAIMANTS )

Claimants: Kaye and Mary Lou Nichols (the Claimants)

Property: Tax lots 700 and 701, Township 5S, Range 2E, Section 18, Clackamas 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 Kaye and Mary Lou Nichols' division and development of the non-prime farm land portion of the 31-acre property (approximately five-acres): applicable provisions of Goal 3 (Agricultural Lands), Goal 14 (Urbanization), ORS 215, and OAR 660 division 33 enacted after July 11, 1974. These land use regulations will not apply to the claimants' use of the non-prime farm land portion of their property only to the extent necessary to allow them to use that portion of their property for the use described in this report, to the extent that use was permitted at the time they acquired the property on July 11, 1974.
2. The action by the State of Oregon provides the state's authorization to Kaye and Mary Lou Nichols to use the non-prime farm land portion of the property for the use described in this report, subject to the standards in effect on July 11, 1974. On that date, the property was subject to the interim planning goals under ORS 215.515 (1973 edition).

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 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 ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

4. Any use of the 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 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 property 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 Deputy 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:

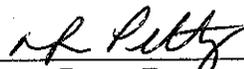
Lane Shetterly, Director



George Naughton, Deputy Director  
DLCD

Dated this 28<sup>th</sup> day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:



Dugan Petty, Deputy Administrator  
DAS, State Services Division

Dated this 28<sup>th</sup> day of March, 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<sup>1</sup>, 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."

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<sup>1</sup> By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

**BALLOT MEASURE 37 (ORS 197.352)  
CLAIM FOR COMPENSATION**

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

March 28, 2006

**STATE CLAIM NUMBER:** M118472

**NAMES OF CLAIMANTS:** Kaye and Mary Lou Nichols

**MAILING ADDRESS:** 114 West Innsbruck Lane  
Midway, Utah 84049

**PROPERTY IDENTIFICATION:** Township 5S, Range 2E, Section 18  
Tax lots 700 and 701  
Clackamas County

**OTHER CONTACT INFORMATION:** James Bean  
1300 SW 5th Avenue  
Portland, Oregon 97201

**DATE RECEIVED BY DAS:** May 19, 2005

**180-DAY DEADLINE:** April 3, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

The claimants, Kaye and Mary Lou Nichols, seek compensation in the amount of \$2,906,814 for the reduction in fair market value as a result of certain 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 31-acre property into one-acre parcels and to develop a dwelling on each parcel. The property is located at 32240 Ona Way, near Molalla, in Clackamas County. (See claim.)

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid only for the approximately five-acre portion of the property that does not constitute prime farmland. For the approximately five-acre non-prime-farmland portion of the property, department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Commission or the department not apply to Kaye and Mary Lou Nichols' division of the that portion of the

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<sup>1</sup> This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Ballot Measure 37 was suspended during the pendency of the appeal of *MacPherson v. Dep't of Admin. Servs.*, 340 Or \_\_\_, 2006 Ore. LEXIS 104 (February 21, 2006).

property for residential development: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), Goal 14 (Urbanization), ORS 215 and OAR 660 division 33. These laws will not apply to the claimants only to the extent necessary to allow the claimants to use the non-prime-farmland portion of the property for the use described in this report, and only to the extent that use was permitted at the time they acquired the property in 1974. (See the complete recommendation in Section VI. of this report.)

For the approximately 26-acre prime farm land portion of the subject property, the claim is not valid, because neither the Land Conservation and Development Commission (Commission), nor the department, have enforced law that restrict the claimants' use of private real property relative to uses permitted at the time the claimants acquired the property. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On August 12, 2005, 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, six written comments, evidence or information were received in response to the 10-day notice.

The comments do not address whether the claim meets the criteria for relief (compensation or waiver) under ORS 197.352 (Ballot Measure 37). Comments concerning the effects a use of the property may have on surrounding areas generally are 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 waiving a state law. (See 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 Ballot 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 Ballot 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 19, 2005, for processing under OAR 125, division 145. The claim identifies current zoning as laws that restrict the use of the property as the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of Ballot Measure 37, are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

## **Conclusions**

The claim has been submitted within two years of December 2, 2004; the effective date of Ballot Measure 37, based on land use regulations 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, Kaye and Mary Lou Nichols, acquired the subject property (tax lots 700 – 29.08 acres; tax lot 701 – 2.0 acres) on July 11, 1974, as reflected by a Land Sale Contract and Warranty Deed included with the claim. A copy of an appraisal, dated September 16, 2004, indicates that Kaye and Mary Lou Nichols are the current owners of the subject property.

### **Conclusions**

The claimants, Kaye and Mary Lou Nichols, are “owners” of the subject property, as that term is defined by ORS 197.352(11)(C), as of July 11, 1974.

### **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 claimant’s 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 claimant or a family member acquired the property.

### **Findings of Fact**

The claim states that “Mr. and Mrs. Nichols desire to develop their property at the one single family residence per acre zoning allowed on July 11, 1974.” Additional information submitted

by the claimants' representative indicates that state laws have restricted the property so that it cannot be subdivided into one-acre parcels with dwellings on each parcel.

The claim is based, generally, on Clackamas County's current Exclusive Farm Use (EFU) 20-acre minimum lot size zone and the applicable provisions of state law that require such zoning. The claimants' property is zoned EFU as required by Statewide Planning Goal 3, in accord with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.<sup>2</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284, 215.780, and OAR 660, division 33 as applied by Goal 3, do not allow the subject property to be divided into parcels less than 80 acres and establish standards for allowing the existing or any proposed parcels to have farm or non-farm dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2003 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. Subsequent amendments to comply with HB 3326, (Chapter 704, Oregon Laws 2001, and effective January 1, 2002,) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

Statewide Planning Goal 14 (Urbanization) would likely apply to the division of the claimants' property into parcels of less than two acres in size. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses. Goal 14 became effective on January 25, 1975.

The claimants, Kaye and Mary Lou Nichols, first acquired the property on July 11, 1974, when it was zoned Rural Area, Single-Family Residential District (RA-1) by Clackamas County. Under the RA-1 zone, single-family dwellings were permitted and there was a one-acre minimum parcel size for the creation of new lots or parcels. However, the claimants acquired the property after the adoption of SB 100 (Chapter 80, Oregon Laws 1973, effective October 5, 1973,) but before the adoption of the statewide planning goals effective January 25, 1975. As such, ORS 197.175(1) and 197.280 (1973 edition) required, in addition to any local plan or zoning

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<sup>2</sup> The claimant's property is "agricultural land" because it contains the following NRCS (Natural Resources Conservation Service) Soils. Specifically, approximately 26 acres, or 90% of the property, is composed of Sawtill Silt Loam (79B) which is rated as "prime" farmland by the NRCS.

provisions, the application of interim land use goals set forth in ORS 215.515 (1973 edition) to the preparation, revision, adoption or implementation of any comprehensive plan prior to the effective date of the statewide planning goals.<sup>3</sup> As a result, if the claimants had sought to create that use in 1973, as a matter of law, the use would have been subject to the interim planning goals at ORS 215.515.<sup>4</sup>

One of the interim goals directly applicable to this claim is: "(d) to conserve prime farm lands for the production of crops," (ORS 215.515, 1973 edition). Soil types are a determinant of prime farm land. About 26 acres (90%) of the subject 31-acre property is composed of soils rated as "prime" by the Natural Resource Conservation Service (NRCS) (see footnote <sup>1</sup>).

No information has been provided showing that dividing the 31 acres into one-acre parcels for residential use complies with the interim planning goals set forth in ORS 215.515 (1973 edition). The property is adjacent to other farm property and larger rural residential lots. It is not located near any urban services. However, the division and development of the prime farm land portion of the subject property (approximately 26 acres), would not "conserve prime farm lands for the production of crops" as required by the interim goals at the time the claimants acquired the property in 1974, and would not have been permitted when the claimants acquired the property. It is unclear whether or to what extent the non-prime farmland portion (approximately five acres) of the subject property would comply with the standards set forth in the interim goals under ORS 215.515 (1973 edition).

### Conclusions

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3 (Agricultural Lands) and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33 were all enacted after Kaye and Mary Lou Nichols acquired ownership of the subject property in July 1974, and do not allow the division or development of the property. In 1974, the property was subject to the requirements of the County's RA-1 zone and the interim planning goals set forth in ORS 215.515. The claimants' requested level of

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<sup>3</sup> See *Petersen v. Klamath Falls*, 279 Or 249 (1977)). Also see *Meeker v. Board of Comm'rs*, 287 Or 665 (1979) (review of a subdivision is an exercise of planning responsibilities requiring application of the Goals) and *State Housing Council v. Lake Oswego*, 48 Or App. 525 (1981) (Land use planning responsibility is not defined in ORS 197). The Supreme Court has interpreted "land use planning responsibility" to include "annexation approvals, subdivision approvals and partition approvals." The use proposed here is to subdivide the land.

<sup>4</sup> The "Interim" land use goals are set forth in ORS 215.515(a) to (j) as follows: (a) "To preserve the quality of the air, water and land resources of the state," (b) "To conserve open space and protect natural and scenic resources," (c) "To provide for the recreational needs of citizens of the state and visitors," (d) "To conserve prime farm lands for the production of crops," (e) "To provide for the orderly and efficient transition from rural to urban land use," (f) "To protect life and property in areas subject to floods, landslides and other natural disasters," (g) "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation," (h) "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development," (i) "To diversify and improve the economy of the state," and (j) "To ensure that development of properties within the state is commensurate with the character and the physical limitations of the land." (ORS 215.515, 1973 edition.)

development does not comply with the standards in effect when Kaye and Mary Lou Nichols acquired their property on July 11, 1974. Ninety percent (90%) of the claimants' 31-acre property is considered "prime" farm land soils by NRCS. This portion of the subject property could not be divided for residential development under the interim goals applicable in 1974. Thus, laws adopted since 1974, do not restrict the claimants' use of that portion of the subject property in a manner that reduces the fair market value of the property relative to how the property could have been used in 1974. It is unclear whether the claimants' requested level of development for the non-prime portion of their property complies with the standards in effect when they acquired the property on July 11, 1974.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimants have identified. There may be other laws that currently apply to the claimants' use of the 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 what laws apply to a use of 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 any land use regulation 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 \$2,906,814 as the reduction in the property's fair market value due to current regulations. This estimate is based on an appraisal assessing the market value of one-acre parcels in the area, less current assessed value.

### **Conclusions**

As explained in Section V.(1) of this report, the current owners are Kaye and Mary Lou Nichols who acquired the property on July 11, 1974. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the non-prime portion of the subject property in a manner that reduces its fair market value. The claimants are not due compensation for the portion of the subject property (approximately 26 acres) with prime farm land soil. Based on the findings and conclusions in Section V.(2) of this report, with regard to the prime-farm land portion of the property, land use regulations enacted by the state since the claimants acquired the property related to the division of the property do not have "the effect of reducing the fair market value of the property, or any interest therein" relative to the uses allowed in 1974, when the property was subject to the interim planning goals. With regard to the non-prime farm land portion of the property, land use regulations enacted since the claimants acquired the property may have restricted the use of the property relative to uses permitted when they acquired it. The claimants estimate the reduction in value due to the restrictions for the entire property to be \$2,906,814.

Based on the documentation submitted, and without verification that the requested use would have been permitted on the non-prime farm land portion of the property when the claimants acquired it, it is not possible to substantiate a specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that there has been some reduction in the fair market value of the non-prime farm land portion of the subject property (approximately five acres) 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 land use regulations that restrict the use of a portion of the property relative to what may have been allowed in 1974, when the property was acquired by Kaye and Mary Lou Nichols. These regulations include Statewide Planning Goal 3, and applicable provisions of ORS 215 and OAR 660 division 33. These regulations are exempt to the extent they were enacted after the claimants acquired the property in July, 1974. Provisions of ORS 215, including the interim planning goals that applied to the property when the claimants acquired the property on July 11, 1974, are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimants acquired the property.

#### **Conclusions**

Without a specific development proposal for the property, it is not possible for the department to determine what laws 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 does appear that the general statutory, goal and rule restrictions on residential development and use of farm land apply to the claimants' use of the property, and these laws are not exempt under ORS 197.352(3)(E), to the extent they were enacted or adopted after the claimants acquired the property in 1974. Provisions of ORS 215 in effect when the claimants acquired the property on July 11, 1974 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimants acquired the 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 property that have not been identified in the claim. In some cases, it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. And, 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 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 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 a law that restricts 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 current owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

### **Findings of Fact**

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the division of approximately five acres of the subject property into one-acre parcels and the development of a dwelling on each parcel. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the entire subject property by \$2,906,814. Based on the documentation submitted, and without verification that the requested use of that portion of the property would have been permitted when the claimants acquired the property, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the non-prime farmland portion of the 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 Kaye and Mary Lou Nichols to use the non-prime farm land portion of the subject property for a use permitted at the time they acquired the property on July 11, 1974.

### **Conclusion**

Based on the record, the department recommends that the claim be denied as to the approximately 26-acre prime farm land portion of the property because neither the Commission nor the department have enforced laws that were enacted after the claimants acquired the property that restrict the claimants' use of that portion of the private real property that is the subject of this claim. The department recommends that the claim be approved as to the

approximately five-acre non-prime farm land portion of the subject property, 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 Kaye and Mary Lou Nichols' division and development of the non-prime farm land portion of the 31-acre property (approximately five-acres): applicable provisions of Goal 3 (Agricultural Lands), Goal 14 (Urbanization), ORS 215, and OAR 660 division 33 enacted after July 11, 1974. These land use regulations will not apply to the claimants' use of the non-prime farm land portion of their property only to the extent necessary to allow them to use that portion of their property for the use described in this report, to the extent that use was permitted at the time they acquired the property on July 11, 1974.
2. The action by the State of Oregon provides the state's authorization to Kaye and Mary Lou Nichols to use the non-prime farm land portion of the property for the use described in this report, subject to the standards in effect on July 11, 1974. On that date, the property was subject to the interim planning goals under ORS 215.515 (1973 edition).
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 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 ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.
4. Any use of the 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 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 property by the claimants.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on March 13, 2006. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's 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.