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 Merlin and Sandra LaJoie, CLAIMANTS	))))	FINAL ORDER CLAIM NO. M118515

Claimants: Merlin and Sandra LaJoie (the Claimants)

Property: Tax lot 1200, Township 3S, Range 3W, Section 14, Yamhill 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 claimants' division of the 23.44-acre non-prime farm land portion of the subject property into approximately 2-acre parcels, or 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 June 3, 1974. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the non-prime farm land portion of 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 June 3, 1974.

2. The action by the State of Oregon provides the state's authorization to Merlin and Sandra LaJoie to use the 23.44-acre non-prime farm land portion of the subject property for the use described in this report, subject to the standards in effect on June 3, 1974. On that date, the property was subject to the applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in 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 subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352, from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the 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
DLCD
Dated this 5th day of April, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 5th day of April, 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[1], 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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[1] 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

April 4, 2006

STATE CLAIM NUMBER:	M118515
NAMES OF CLAIMANTS:	Merlin and Sandra LaJoie
MAILING ADDRESS:	20855 Williamson Road Newberg, Oregon 97132
PROPERTY IDENTIFICATION:	Township 3S, Range 3W, Section 14 Tax lot 1200 Yamhill County
OTHER CONTACT INFORMATION:	Michael Gunn 201-B North Meridian Street P.O. Box 1046 Newberg, Oregon 97132
DATE RECEIVED BY DAS:	May 26, 2005
180-DAY DEADLINE:	April 10, 2006[1]

I. SUMMARY OF CLAIM

The claimants, Merlin A. and Sandra K. LaJoie, seek compensation in the amount of $3 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 52.44-acre property into 25 parcels and to develop a dwelling on each parcel. The subject property is located at 20855 Northeast Williamson Road, near Newberg, in Yamhill 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 this claim be denied for the 29-acre portion of the subject property that is located on prime farm land (approximately 56 percent of the property) because neither the Land

[1] 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).

Conservation and Development Commission nor the department has enforced laws that were enacted or adopted after the claimants acquired the property that restrict the claimants' use of the prime farm land portion of the property for the use proposed by the claimant. Department staff recommends that, for the 23.44-acre non-prime farm land portion of the subject property, in lieu of compensation, the requirements of the following state laws enforced by the Commission or the department not apply to the claimants' use of that non-prime farm land portion of the property to allow the claimants to divide 23.44 acres of the property into approximately 2-acre parcels, and to develop 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 June 3, 1974. These laws will not apply to the claimants only to the extent necessary to allow them to use the 23-44-acre non-prime farm land portion of 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 June 3, 1974. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

On June 9, 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, two written comments were received in response to the 10-day notice.

One of the written letters contains comments that are relevant to whether the restriction of the claimants' use of the subject property reduces the fair market value of the property. These comments have been considered by the department in preparing this report.

The other comment does not address whether the claim meets the criteria for relief under ORS 197.352 (Ballot Measure 37). 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 comment letters in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

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

1. For claims arising from land use regulations enacted prior to the effective date of 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 criterion, whichever is later.

Findings of Fact

This claim was submitted to DAS on May 26, 2005, for processing under OAR 125, division 145. The claim identifies Yamhill County ordinances that preclude division and development of the subject property and OAR 660-004-0040 as 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 Ballot 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, Merlin and Sandra LaJoie, acquired the subject property on June 3, 1974, as reflected by a real estate sale contract included with the claim. A May 7, 1992, fulfillment warranty deed was also included with the claim. A copy of a lot book report dated May 11, 2005, indicates that Merlin and Sandra LaJoie are the current owners of the subject property.

Conclusions

The claimants, Mr. and Ms. LaJoie, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C), as of June 3, 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 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 52.44-acre property into approximately 2-acre parcels and to develop a dwelling on each parcel, which they are precluded from doing as a result of Yamhill County's Exclusive Farm Use (EFU) zoning and OAR 660-004-0040 and -0018.[2]

The claim is based generally on Yamhill County's current EFU zone and the applicable provisions of state law that require such zoning. The claimants' property is zoned EFU 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.[3] 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 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 established 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.)

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[2]OAR 660-004-0040 (Application of Goal 14 (Urbanization) to Rural Residential Areas) was adopted in 2000 and applies only to lands zoned for rural residential use, and requires an exception under OAR 660-004-0018 (Planning and Zoning for Exceptions Areas) for divisions of rural residential lands into parcels that exceed the minimum lot or parcel size under that rule. The subject property is not zoned for rural residential use and is not otherwise in an exception area. Absent an explanation by the claimants as to how these rules apply to the subject property, or how they restrict the claimants' use of the property in a manner that reduces its fair market value, this report does not address those rules further.

[3] The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service (NRCS) Class I-IV soils. Specifically, a majority of the subject property is composed of prime farm land soil: Woodburn Silt Loam, 0.0 to 7.0 percent slopes (Class II), 56 percent of the parcel (29 acres). The prime soils form a large block on the eastern half of the property. Other soils on the parcel include Woodburn Silt Loam 7.0 to 12.0 percent slopes, Jory Clay Loam and Nekia Clay Loam. (NRCS Soil Survey of Yamhill Area, Oregon, Map 15, and soil survey data at http://soils.usda.gov/survey/.)

The claimants acquired the subject property on June 3, 1974, after the adoption of Senate Bill 100 (Chapter 80, Oregon Laws 1973, effective on October 5, 1973) but before the adoption of the statewide planning goals effective on January 25, 1975.

During the period between October 5, 1973 and January 25, 1975, ORS 197.175(1) and 197.280 (1973 editions) required, in addition to any local plan or zoning provisions, that cities and counties exercise their planning responsibilities in accordance with the interim land use goals set forth in ORS 215.515 (1973 edition). *Petersen v. Klamath Falls*, 279 Or 249 (1977); *see also, 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); *State Housing Council v. Lake Oswego*, 48 Or App. 525 (1981) (noting that while "[l]and use planning responsibility is not defined in ORS ch 197, the Supreme Court has interpreted that term as including annexation approvals, *subdivision approvals* [emphasis added] and partition approvals.") citing *Petersen, Meeker* and *Alexanderson v. Polk County*, 285 Or 427 (1980). The claimants' desired use includes division of their land. If the claimants had sought to create that use in 1974, as a matter of law, the use would have been subject to the interim planning goals at ORS 215.515.[4]

The following interim goals are directly applicable to this claim: "To preserve the quality of the air, water and *land* [emphasis added] resources of the state"; "To conserve prime farm lands for the production of crops"; "To provide for the orderly and efficient transition from rural to urban land use"; "To protect life and property in areas subject to floods, landslides and other natural disasters"; "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"; and "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." ORS 215.515 (1973 edition).

One of the interim goals was to "conserve prime farm lands for the production of crops." Soil types are a determinant of prime farm land. Fifty-six percent (29 acres) of the soils on the 52.44-acre property are rated as "prime" by the Natural Resource Conservation Service. According to the Oregon Department of Agriculture, Oregon has only a limited supply of soils rated "prime" (8.0 percent of all agricultural land).[5]

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[4] The "interim" land use goals are set forth in ORS 215.515(1)(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).

[5] According to the Oregon Department of Agriculture, based on data from the NRCS, there are 15.5 million acres of agricultural land zoned for EFU in Oregon. Oregon has 1.2 million acres of soils rated as "prime."

The claim does not establish that the approval of 25 lots or parcels of approximately two acres each for residential use complies with the interim planning goals. To the contrary, and in particular, the desired division and development of the 29 acres of "prime" farm land would not "conserve prime farm lands for the production of crops" as required by the interim goals at the time the claimants acquired the subject property in 1974. The claim does not establish whether or to what extent the claimants' desired division and development of the remaining 23.44-acre non-prime portion of the subject property complies with the interim planning goals set forth in ORS 215.515 (1973 edition.)

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimants acquired the subject property in 1974, and do not allow the desired division or development of the property. However, the claimants' requested level of development also does not comply with the standards in effect when the claimants acquired the subject property on June 3, 1974. Fifty-six percent of the claimants' 52.44-acre property is "prime" farm land, and the claimants' desired division and development of that 29-acre portion of the property would not "conserve prime farm lands for the production of crops." Accordingly, this portion of the subject property could not be divided for residential development under the interim goals applicable in 1974. It is unclear whether the desired division and development of the non-prime farm land portion of the subject property would be allowed under the interim goal standards in effect when the claimants acquired the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the 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 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 $3 million as the reduction in the subject property's fair market value, as a result of current regulations. This amount is based on the claimants' estimate of the market value of 25 parcels valued at $175,000 each ($4,375,000), minus the current value of the subject property ($1,375,000).

Conclusions

As explained in Section V.(1) of this report, the claimants are Merlin and Sandra LaJoie, who acquired the subject property on June 3, 1974. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants acquired the subject property may restrict the desired division and development of the property. The claimants estimate the reduction in value due to the restrictions to be $3 million.

However, given that the claimants' desired use of the block of prime farm land portion of the subject property would not have been permitted when the claimants acquired the property, and without an appraisal or other documentation and without verification of whether or the extent to which the claimants' desired use of the non-prime portion of the property was allowed under the standards in effect when the claimants acquired the property in 1974, it is not possible to substantiate the 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 the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

4. Exemptions Under ORS 197.352(3)

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

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Yamhill County has implemented through its EFU zone. With the exception of applicable provisions of ORS 215, including the interim land use planning goals set forth at ORS 215.515 (1973 edition), in effect on June 3, 1974, these state land use regulations were not in effect when the claimants acquired the subject property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that, with the exception of provisions of ORS 215 in effect on June 3, 1974, the general statutory, goal and rule restrictions on division and development of the claimants' property were not in effect when the claimants acquired the property. As a result, these laws are not exempt under ORS 197.352(3)(E). Provisions of ORS 215, including the interim statewide planning goals in effect when the claimants acquired the subject property on June 3, 1974, are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Laws in effect when the claimants acquired the subject property 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 the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of 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. 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 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.

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 owners to carry out a use of the property permitted at the time the current owners acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' ability to divide the 52.44-acre property into 25, approximately 2-acre, parcels and to develop a dwelling on each parcel. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by $3 million. Because the level of development requested in the claim was not permitted when the claimants acquired the subject property, and without an appraisal or other documentation establishing how the specific restrictions reduce the fair market value of the subject property and without verification of whether or the extent to which the claimants' desired use of the non-prime portion of the property was allowed under the standards in effect when they acquired the property, a specific amount compensation cannot be determined. 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 farm land portion of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or

parts of certain land use regulations to allow Mr. and Ms. LaJoie to use the subject property for a use permitted at the time they acquired the property on June 3, 1974.

Conclusions

Based on the record, the department recommends that the claim be denied as to the 29-acre prime farm land portion of the subject property because neither the Commission or the department has enforced laws that were enacted or adopted after the claimants acquired the 52.44-acre property that restrict the claimants' use of the prime farm land portion of the property relative to uses permitted at the time they acquired the property on June 3, 1973. The department recommends that the claim be approved as to the 23.44-acre non-prime farm land portion of the 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 the claimants' division of the 23.44-acre non-prime farm land portion of the subject property into approximately 2-acre parcels, or 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 June 3, 1974. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the non-prime farm land portion of 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 June 3, 1974.

2. The action by the State of Oregon provides the state's authorization to Merlin and Sandra LaJoie to use the 23.44-acre non-prime farm land portion of the subject property for the use described in this report, subject to the standards in effect on June 3, 1974. On that date, the property was subject to the applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in 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 subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352, from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352, from a local public entity that has

jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 14, 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.