

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. M118526
(BALLOT MEASURE 37) OF	)	
Harold and Diane Haugen, and	)	
Cora Bruce, CLAIMANTS	)	

Claimants: Harold and Diane Haugen, and Cora Bruce (the Claimants)

Property: Tax lot 2400, Township 36S, Range 6W, Section 15C, Josephine 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 2.68-acre property into one-acre parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, enacted or adopted after July 3, 1986, for Harold and Diane Haugen and after February 8, 2005, for Cora Bruce. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow the claimants to use the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the property subject to the standards in effect on July 3, 1986, for Harold and Diane Haugen and on February 8, 2005, for Cora Bruce. On July 3, 1986, the property was subject to the county's acknowledged EFU zone, and the applicable provisions of Goal 3, ORS 215 and OAR 660, division 5, then in effect. On February 8, 2005, the property was subject to applicable provisions of Goal 3, ORS 215 and ORS 660, division 33, currently in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in Condition 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 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.

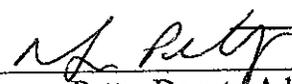
FOR DLCD AND THE LAND CONSERVATION  
AND DEVELOPMENT COMMISSION:

Lane Shetterly, Director

  
\_\_\_\_\_  
George Naughton, Deputy Director  
DLCD

Dated this 10<sup>th</sup> day of April, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:

  
\_\_\_\_\_  
Dugan Petty, Deputy Administrator  
DAS, State Services Division  
Dated this 10<sup>th</sup> 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<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.

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

April 10, 2006

**STATE CLAIM NUMBER:** M118526

**NAMES OF CLAIMANTS:** Harold and Diane Haugen  
Cora Bruce

**MAILING ADDRESS:** 4300 Lower River Road  
Grants Pass, Oregon 97526

**PROPERTY IDENTIFICATION:** Township 36S, Range 6W, Section 15C  
Tax lot 2400  
Josephine County

**OTHER CONTACT INFORMATION:** Michael Spencer (agent submitting claim)  
419 Main Street  
Klamath Falls, Oregon 97601

**DATE RECEIVED BY DAS:** May 31, 2005

**180-DAY DEADLINE:** April 15, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

The claimants, Harold and Diane Haugen and Cora Bruce, seek compensation in the amount of \$274,360 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 2.68-acre property into one-acre parcels and develop a dwelling on each parcel. The subject property is located at 4300 Lower River Road, near Grants Pass, in Josephine 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 Harold and Diane Haugen and Cora Bruce's division of the 2.68-acre property into one-acre parcels and to their development of a dwelling on each parcel: applicable provisions of

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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 that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after Harold and Diane Haugen acquired the property on July 3, 1986, and after Cora Bruce acquired the property on February 8, 2005. These laws will not apply to the claimants only to the extent necessary to allow Harold and Diane Haugen to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on July 3, 1986, and to allow Cora Bruce to use the subject property for the use described in this report and only to the extent that use was permitted when she acquired the property on February 8, 2005. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow them to use the property in the manner set forth in this claim. (See the complete recommendation in Section VI of this report.)

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

#### **Comments Received**

On August 17, 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, one written comment was received in response to the 10-day notice. The comment is relevant to whether the restriction of the claimants' use of the subject property reduces the fair market value of the property. The comment has been considered by the department in preparing this report.

### **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, as extended by the 139 days enforcement of the Measure was suspended during the pendency of the *MacPherson v. DAS* appeal, 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 criterion, whichever is later.

#### **Findings of Fact**

This claim was submitted to DAS on May 31, 2005, for processing under OAR 125, division 145. The claim identifies numerous provisions of ORS 215 and OAR 660, division 6, as well as all of the statewide planning goals and all of OAR 660, division 33, as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

## **Conclusions**

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), as extended by the 139 days enforcement of the Measure was suspended during the pendency of the *MacPherson v. DAS* appeal, 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 the statute. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

### **Findings of Fact**

Claimant Cora Bruce initially acquired the subject property on August 29, 1974, as reflected by a warranty deed included in the claim. Ms. Bruce conveyed the property to claimants Harold and Diane Haugen on July 3, 1986, as reflected by statements made in the claim and confirmed by the Josephine County Assessor’s office. Harold and Diane Haugen conveyed a 10 percent interest in the property to Cora Bruce on February 8, 2005, as reflected by a warranty deed included with the claim. Cora Bruce is Diane Haugen’s mother.

The Josephine County Assessor’s Office confirmed that the claimants are the current owners of the subject property.

### **Conclusions**

The claimants, Harold and Diane Haugen and Cora Bruce, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). Harold and Diane Haugen have been owners as of July 3, 1986, and Cora Bruce has been an owner as of February 8, 2005. The property has been owned by the family since August 29, 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 2.68-acre property into one-acre parcels for homes, which is prohibited under the property’s current zoning.<sup>2</sup>

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<sup>2</sup> The claim lists numerous provisions of ORS 215, OAR 600 and all of the statewide planning goals as restricting the use of the property, but does not establish how each of these regulations restricts the use of the subject property

The claim is based generally on Josephine County's current Exclusive Farm Use (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.<sup>3</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 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.)

Goal 14 would likely apply to the division of the 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' family acquired the property on August 29, 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. At that time, it was zoned Residential Agriculture Suburban Residential (SR) by Josephine County.<sup>4</sup>

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 planning 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*

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in a manner that reduces the fair market value of the property. On their face, most of the regulations cited in the claim either do not apply to the subject property or do not restrict the use of the subject property. In the absence of any explanation by the claimants as to how those regulations restrict the use of the subject property in a manner that reduces the property's fair market value, this report addresses only those regulations that the department finds are applicable to the claimants' use of the subject property.

<sup>3</sup> The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

<sup>4</sup> The SR zone was never acknowledged as complying with the statewide planning goals.

*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 subdivision 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.<sup>5</sup>

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. All of the soils on the subject property (Newberg fine sandy loam), are rated as “prime” by the Natural Resource Conservation Service (NRCS) if irrigated. According to the Oregon Department of Agriculture, Oregon has only a limited supply of soils rated “prime” (eight percent of all agricultural land).<sup>6</sup>

No information has been provided establishing whether or to what extent the claimants’ desired division and residential development of the subject property complies with the interim planning goals set forth in ORS 215.515 (1973 edition), in effect at the time the claimants’ family acquired the property on August 29, 1974.

### Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimants’ family acquired the subject property. These laws may restrict the use of the subject property relative to the uses allowed when the claimants’ family acquired the property.

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<sup>5</sup> The “interim” land use goals are set forth in ORS 215.515(1)(a) to (j) (1973 edition) 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 the development of properties within the state is commensurate with the character and the physical limitations of the land.” ORS 215.515 (1973 edition).

<sup>6</sup> 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.”

### **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 \$274,360 as the reduction in the subject property’s fair market value due to current regulations. It is not clear from the claim how the claimants estimated this reduction in fair market value.

#### **Conclusions**

As explained in Section V.1 of this report, the claimants are Harold and Diane Haugen and Cora Bruce whose family acquired the subject property in 1974. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the 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’ family acquired the subject property restrict the desired division and development of the property. The claimants estimate the reduction in value due to the restrictions to be \$274,360.

Without an appraisal or other documentation, 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 since the claimants’ family acquired the property.

### **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 the statute.

#### **Findings of Fact**

The claim is based on state land use regulations that restrict the use of the subject property relative to the uses permitted when the claimants’ family acquired the property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. All of these land use regulations were enacted or adopted after the claimants’ family acquired the subject property.

#### **Conclusions**

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimants’ family acquired the property on August 29, 1974. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimants’ family acquired the subject property are exempt under ORS 197.352(3)(E), and do not provide a basis for compensation. In addition, other land use

laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt, and would not provide a basis for compensation.

## **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the current 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, laws enforced by the Commission or the department restrict the claimants' ability to divide the 2.68-acre property into one-acre parcels and their development of a dwelling on each parcel. The claim asserts that the laws enforced by the Commission or the department reduce the fair market value of the subject property by \$274,360. However, because the claim does not provide an appraisal or other specific documentation for how the specified restrictions reduce the fair market value of the subject property, a specific amount of 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 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 Harold and Diane Haugen to use the subject property for a use permitted at the time they acquired the property on July 3, 1986, and to allow Cora Bruce to use the subject property for a use permitted at the time she acquired the property on February 8, 2005.

When Harold and Diane Haugen acquired the subject property on July 3, 1986, it was subject to Josephine County's EFU zone, which was acknowledged by the Commission for compliance with Goal 3 on December 9, 1985. At that time, the division and development of the property was governed by the county's EFU zone and the applicable provisions of ORS 215 and OAR 660, division 5, then in effect.

When Cora Bruce acquired an interest in the subject property in February 2005, it was zoned EFU by Josephine County and subject to the current lot size and dwelling standards under Goal 3, ORS 215 and OAR 660, division 33, as described in Section V.2 of this report.

In addition to the applicable provisions of Goal 3 and ORS 215 in effect on July 3, 1986 (for Harold and Diane Haugen) and February 8, 2005 (for Cora Bruce), and other laws in effect when the claimants acquired the subject property, there may be other laws that 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 and, depending on when they were enacted or adopted, may continue to apply to the claimants' property. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D), and will continue to apply to the subject property on that basis.

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

### **Conclusions**

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to the claimants' division of the 2.68-acre property into one-acre parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, enacted or adopted after July 3, 1986, for Harold and Diane Haugen and after February 8, 2005, for Cora Bruce. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow the claimants to use the subject property in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the property subject to the standards in effect on July 3, 1986, for Harold and Diane Haugen and on February 8, 2005, for Cora Bruce. On July 3, 1986, the property was subject to the county's acknowledged EFU zone, and the applicable provisions of Goal 3, ORS 215 and OAR 660, division 5, then in effect. On February 8, 2005, the property was subject to applicable provisions of Goal 3, ORS 215 and ORS 660, division 33, currently in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.
4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in Condition 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 23, 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.