

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. M118642
(BALLOT MEASURE 37) OF)	
James A. and Edna M. Peck, CLAIMANTS)	

Claimants: James A. and Edna M. Peck (the Claimants)

Property: Township 21S, Range 11W, Section 16, Tax lots 2300 and 2400, Douglas 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 James and Edna Peck's division of the 117.91-acre-acre property into a 12.91-acre parcel and a 105-acre parcel or to their development of a dwelling on the 105-acre parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6 and 33, enacted or adopted after the claimants acquired each of the tax lots that composes the subject property. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use tax lot 2400 for the use described in this report, and only to the extent that use was permitted when they acquired their current interest in tax lot 2400 on July 1, 1985, and to use tax lot 2300 for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 2300 on July 10, 1990.

2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lot 2400 for the use described in this report, subject to the standards in effect on July 1, 1985. On that date, tax lot 2400 was subject to compliance with Douglas County's acknowledged FF zone and the applicable provisions of ORS 215 then in effect. The action by the State of Oregon also provides the state's authorization to the claimants to use tax lot 2300 for the use described in this report, subject to the standards in effect on July 19, 1990. On that date, tax lot 2300 was

subject to compliance with Douglas County's acknowledged EFU-G and FF zones and the applicable provisions of ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that 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.

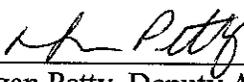
This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS 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 28th day of April, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 28th 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 197.352¹, 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."

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.

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

April 28, 2006

STATE CLAIM NUMBER: M118642

NAMES OF CLAIMANTS: James A. and Edna M. Peck

MAILING ADDRESS: 4093 South Smith River Road
Reedsport, Oregon 97467

PROPERTY IDENTIFICATION: Township 21S, Range 11W, Section 16
Tax lots 2300 and 2400
Douglas County

DATE RECEIVED BY DAS: June 20, 2005

180-DAY DEADLINE: May 5, 2006¹

I. SUMMARY OF CLAIM

The claimants, James and Edna Peck, seek compensation in the amount of \$230,000 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 117.91-acre property into one 12.91-acre parcel and one 105-acre parcel and to develop a dwelling on the 105-acre parcel. The subject property is located at 4093 South Smith River Road in Douglas 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 James and Edna Peck's division of the 117.91-acre property into one 12.91-acre parcel and one 105-acre parcel and to their development of a dwelling on the 105-acre parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6 and 33, enacted or adopted after they acquired each of the two tax lots that composes the subject property. These laws will not apply to the claimants only to the extent necessary to allow them to use tax lot 2400 for the

¹ 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).

use described in this report, and only to the extent that use was permitted when they acquired their current ownership interest in tax lot 2400 on July 1, 1985. These laws will also not apply to the claimants only to the extent necessary to allow them to use tax lot 2300 for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 2300 on July 10, 1990. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On September 6, 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 comments does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letter in the department's claim file.)

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

Findings of Fact

This claim was submitted to DAS on June 20, 2005, for processing under OAR 125, division 145. The claim identifies Douglas County's Farm Forest (FF) and Exclusive Farm Use-Grazing (EFU-G) zones as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

The claimants, James and Edna Peck, acquired tax lot 2300 on July 10, 1990, as reflected by a land sales contract and deed included with the claim. Tax lot 2300 was transferred to the James and Edna Peck Family Trust, a revocable trust, on December 15, 1993, for which the claimants are trustees.²

The claimants initially acquired portions of tax lot 2400 on May 29, 1951, and portions of it on February 2, 1971, as reflected by a warranty deed and land sales contract included with the claim. The claimants deeded tax lot 2400 to Peck’s Achers, Inc. on August 7, 1979, reserving the right to the timber on the property and the right to enter onto the property to remove the timber. On July 1, 1985, Peck’s Achers, Inc. deeded the property back to the claimants.³ Tax lot 2400 was transferred to the James and Edna Peck Family Trust, a revocable trust, on December 15, 1993.

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

Conclusions

The claimants, James and Edna Peck, are “owners” of tax lot 2300 as that term is defined by ORS 197.352(11)(C), as of July 10, 1990. As to tax lot 2400, the claimants are the owners of the right to the timber on the property and the right to enter and remove timber as of 1951 and 1971, with respect to the portions of the property that they acquired on those dates. Claimants are the owners of their current ownership interest in tax lot 2400 as of July 1, 1985.

Although a corporation can be a “family member” of an owner as that term is defined by ORS 197.352(11)(C), an “owner” that is a corporate entity cannot claim an individual as a “family member,” as defined in ORS 197.352(11)(A). Therefore, none of the individuals who

² Transfer to a revocable trust does not change the ownership of the property for purposes of ORS 197.352.

³ Peck’s Achers, Inc. is a domestic business corporation registered with the Oregon Secretary of State and owned by the Pecks.

transferred the subject property to Peck's Achers, Inc. can be considered a "family member" of Peck's Achers, Inc.

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 states, "LCDC Law 660-033-0100 [*sic*] and Douglas County's interpretation thereof has restricted the ability of Mr. and Mrs. Peck to deed 105 acres of their property to their son."

The claim is based generally on Douglas County's current EFU-G and FF zones and the applicable provisions of state law that require such zoning. A portion of tax lot 2300 is zoned EFU-G as required by Goal 3 in accordance with ORS 215 and OAR 660, division 33, because a portion of the claimants' tax lot 2300 is "agricultural land" as defined by Goal 3.⁴ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the goal be zoned Exclusive Farm Use (EFU) pursuant to ORS 215. The remaining portion of tax lot 2300 and all of tax lot 2400 is zoned FF, which is a mixed agricultural and forest land zone adopted to comply with Goal 4 and the implementing provisions of OAR 660-006-0050 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

With regard to that portion of tax lot 2300 zoned EFU-G, 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.)

⁴ The claimants' portion of tax lot 2300 zoned EFU-G is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

The claimants acquired tax lot 2300 on July 10, 1990. At that time, a portion of this tax lot was subject to the Douglas County's acknowledged EFU-G zone.⁵ When the claimants acquired tax lot 2300 in 1990, the desired division and development of the portion of the property zoned EFU-G would have been governed by that zone and the applicable provisions of ORS 215 and OAR 660, division 5, then in effect. The claim does not establish whether or to what extent the claimants' desired use of the property would have been permitted when they acquired tax lot 2300.

With regard to tax lot 2400 and that portion of tax lot 2300 zoned FF under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.⁶ Depending on the predominant use on January 1, 1993, the portion of the property zoned FF is subject to either the requirements for dwellings applicable under EFU zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6. This includes the dwelling standards asserted by the claimants as restricting the use of the subject property.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the 80-acre minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Douglas County's FF zone is 80 acres. The claimants' property cannot be divided into parcels smaller than 80 acres.

The claimants acquired the right to remove timber from tax lot 2400 in 1951 and 1971. The claimants acquired a fee interest in tax lot 2400 on July 1, 1985, and acquired tax lot 2300 on July 10, 1990. The claim does not establish how any state land use regulations have restricted the claimants' ability to remove timber from tax lot 2400. Rather, the claim, and the claimants' desired use of the property, are based on state land use regulations that restrict the claimants' ability to use the interest in tax lot 2400 that they acquired in 1985. In 1985 and 1990, tax lot 2400 and the portion of tax lot 2300 currently zoned FF were subject to Douglas County's acknowledged FF zone.⁷ When the claimants' acquired these tax lots, the desired division and development of tax lot 2400, and the portion of tax lot 2300 zoned FF, would have been governed by the county's FF zone and the applicable provisions ORS 215, then in effect. The claim does not establish whether or to what extent the claimants' desired use of the property would have been permitted when they acquired tax lot 2400 in 1985 and tax lot 2300 in 1990.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goals 3 and 4 for lands zoned for mixed farm forest use and the statutory and rule restrictions under the applicable provisions of ORS 215 and OAR 660, divisions 6 and 33, were enacted or adopted after the claimants acquired the subject property in 1985 and 1990 and do not allow the

⁵ Douglas County's EFU-G zone was acknowledged by the Commission for compliance with Goal 3 on July 25, 1989.

⁶ No information was provided to the department regarding the predominant use of those portions of the property zoned FF on January 1, 1993.

⁷ Douglas County's FF zone was acknowledged by the Commission for compliance with Goal 4 on January 18, 1983.

desired division and development of the property. However, the claim does not establish whether or to what extent the claimants' desired use of the property would have been permitted when they acquired their current interest in tax lot 2400 in 1985 and when they acquired tax lot 2300 in 1990.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. There may be other laws that currently apply to the claimants' use of the subject property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that 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 \$230,000 as the reduction in the subject property's fair market value due to current regulations. This amount is based on the claimants' estimate of the current value of tax lot 2400 with a home (\$325,000) and tax lot 2300 without a home (\$250,000) for a total of \$575,000, as compared to the value of both tax lots with homes estimated at \$825,000.

Conclusions

As explained in Section V.1 of this report, the claimants are James and Edna Peck who acquired tax lot 2400 on July 1, 1985, and tax lot 2300 on July 10, 1990. The claimants acquired the right to remove timber from tax lot 2400 in 1951 and 1971. 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 an equitable and legal title in 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 \$230,000.

Without an appraisal or other documentation, and without verification of whether or the extent to which the claimants' desired use of the property was allowed under the standards in effect 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 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 the statute.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6 and 33, which Douglas County has implemented through its EFU-G and FF zones. With the exception of the provisions of ORS 215 in effect when the claimants acquired their current interest in tax lot 2400 on July 1, 1985, and the provisions of ORS 215 in effect when the claimants acquired tax lot 2300 on July 10, 1990, these land use regulations were not in effect when the claimants acquired the subject property.⁸

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 the general statutory, goal and rule restrictions on residential development and use of farm land and mixed farm forest land apply to the claimants' use of the subject property, and these laws are not exempt under ORS 197.352(3)(E) to the extent that they were enacted or adopted after the claimants acquired their current interest in tax lot 2400 on July 1, 1985, and after the claimants acquired tax lot 2300 on July 10, 1990. As a result, these laws are not exempt under ORS 197.352(3)(E).

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. In addition, the department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. The provisions include fire protection standards for dwellings and for surrounding forest zones. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . ." To the extent they are applicable to the portion of the claimants' property zoned FF, siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3).

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 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. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

⁸ To the extent any laws enforced after 1951 and 1971 restrict the claimants' ability to enter onto the property and remove timber from tax lot 2400, those laws would not be exempt to the extent that they limit that ability.

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 the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of 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 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 117.91-acre property into a 12.91-acre parcel and a 105-acre parcel and to develop a dwelling on the 105-acre parcel. The claim asserts that the laws enforced by the Commission or the department reduce the fair market value of the subject property by \$230,000. 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, and without verification of whether or the extent to which the claimants' desired use of the property was allowed under the standards in effect when the claimants acquired the 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 James and Edna Peck to use the subject property for a use permitted at the time they acquired their current interest in tax lot 2400 on July 1, 1985, and tax lot 2300 on July 10, 1990.

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 James and Edna Peck's division of the 117.91-acre property into a 12.91-acre parcel and a 105-acre parcel or to their development of a dwelling on the 105-acre parcel: applicable

provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6 and 33, enacted or adopted after the claimants acquired each of the tax lots that composes the subject property. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use tax lot 2400 for the use described in this report, and only to the extent that use was permitted when they acquired their current interest in tax lot 2400 on July 1, 1985, and to use tax lot 2300 for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 2300 on July 10, 1990.

2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lot 2400 for the use described in this report, subject to the standards in effect on July 1, 1985. On that date, tax lot 2400 was subject to compliance with Douglas County's acknowledged FF zone and the applicable provisions of ORS 215 then in effect. The action by the State of Oregon also provides the state's authorization to the claimants to use tax lot 2300 for the use described in this report, subject to the standards in effect on July 19, 1990. On that date, tax lot 2300 was subject to compliance with Douglas County's acknowledged EFU-G and FF zones and the applicable provisions of ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that 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 April 11, 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.