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. M121831
(BALLOT MEASURE 37) OF	)	
James and Victoria Reese, CLAIMANTS	)	

Claimants: James and Victoria Reese (the Claimants)

Property: Township 37S, Range 4W, Section 11, Tax lot 203, Jackson 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 Victoria's partition of the 47.20-acre property into four approximately 10-acre parcels or to their development of a dwelling on each of the parcels: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after February 10, 1982. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired an interest in the property on February 10, 1982.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the property for the use described in this report, subject to the standards in effect on February 10, 1982. On that date, the property was subject to applicable provisions of Goal 3 and 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 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 12th day of June, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 12th day of June, 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."

[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

June 12, 2006

STATE CLAIM NUMBER:	M121831
NAMES OF CLAIMANTS:	James and Victoria Reese
MAILING ADDRESS:	2400 Foots Creek Road Gold Hill, Oregon 97525
PROPERTY IDENTIFICATION:	Township 37S, Range 4W, Section 11 Tax lot 203 Jackson County
OTHER CONTACT INFORMATION:	Alan D. B. Harper 717 Murphy Road Medford, Oregon 97504
OTHER INTEREST IN PROPERTY:	Henry and Katherine Terhofter
DATE RECEIVED BY DAS:	August 3, 2005
180-DAY DEADLINE:	June 15, 2006[1]

I. SUMMARY OF CLAIM

The claimants, James and Victoria Reese, seek compensation in the amount of $750,000 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 47.20-acre property into four approximately 10-acre parcels and to develop a dwelling on each of the parcels. The subject property is located at 2400 Foots Creek Road, east of Hosmer Lane, in Jackson 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

[1] This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Measure 37 was suspended during the pendency of the appeal of *MacPherson v. Dept. of Admin. Srvcs.*, 340 Or 117 (2006).

not apply to James and Victoria Reese's partition of the 47.20-acre property into four approximately 10-acre parcels and to develop a dwelling on each of the parcels: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after February 10, 1982. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired an interest in the property on February 10, 1982. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 3, 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. (See the comment letter in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

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

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

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

Findings of Fact

This claim was submitted to DAS on August 3, 2005, for processing under OAR 125, division 145. The claim identifies Jackson County's Exclusive Farm Use (EFU) zone and certain state laws 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 Victoria Reese, acquired an undivided one-half interest in the subject property on February 10, 1982, as reflected by the memorandum of contract included with the claim.[2] The Jackson County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, James and Victoria Reese, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C), as of February 10, 1982.

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 acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the subject property into "marketable lots obtaining home sites on each" through Jackson County, and the "loss of value material attached to this claim used ten acres lots. . . ." The claim lists the following state laws as restricting the use of the property: Goals 3, 5 (Natural Resources), 11 (Public Facilities and Services) and 14 (Urbanization); ORS 92, 195, 197 and 215; and OAR 660-004-0040(7)(e)(A), 660-011-0060(2), 660-012-0065, 660-012-0070, 660-033-0120, 660-033-0130 and 660-033-0135.

The claim also states, "While we anticipate that the above-mentioned regulations specifically relate to the diminution in value, there may be other provisions specifically relating to setbacks, overlay restrictions (such as view shed or wildlife and destination resorts) access or the expiration of any home site approvals, all of which the [c]laimant seeks relief."

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[2] According to the 1982 contract, Henry and Katherine Terhofter acquired the remaining one-half interest in the subject property as tenants in common. According to the claimants' attorney, "The other interests in the property have been transferred but, as evidenced by the deed card, the [c]laimants' ownership has been continuous since the date of acquisition." As reflected by the information included with this claim, Henry and Katherine Terhofter have an ownership interest in the subject property, but are not claimants for the purpose of this Measure 37 claim.

The claim does not establish how these state land use regulations restrict the use of the property in a manner that reduces the fair market value of the property. Several of these statutes and rules are either not applicable to the subject property or do not, on their face, restrict the use of the subject property. Except for the regulations addressed in this report, absent an explanation by the claimants as to how these regulations restrict the use of the claimants' property in a manner that reduces the property's fair market value, these regulations are not addressed further.

The claimants summarily list ORS 92 as restricting the use of the property. ORS 92 establishes procedures for subdivisions and partitions. The claimants do not establish how these statutes limit the desired division of the property into four parcels. Absent any evidence from the claimants as to how these statutes restrict the desired use of the property resulting in a reduction in its fair market value, these statutes are not addressed further in this report.

The claimants have also listed the following land use regulations as those that restrict the use of property compared to uses permitted in 1982: Goals 5, 11 and 14; ORS 195 and 197; and OAR 660-004-0040(7)(e)(A), 660-011-0060(2), 660-012-0065, 660-012-0070, 660-033-0120, 660-033-0130 and 660-033-0135. [3]

Goals 5, 11 and 14 were in effect when the claimants acquired an interest in the subject property on February 10, 1982, and the claimants have not established how any changes to these Goals since that date have restricted their desired use of the property. It appears that there may be a flood plain area and wetlands on the property (according to county records), and as a result, Goal 5 may apply to the claimants' desired use of their property. However, the claimants have not established how any changes to the Goals have restricted their desired use. The claimants also have provided no information concerning why Goal 11 or 14 may restrict their desired use.

Similarly, ORS 195 and 197 establish procedures for coordination of local comprehensive plans. The claim states that these laws, in whole or in part, subsequent to the claimants' acquisition in 1982 have "directly or partially contributed to the demonstrated loss of value." The claim does not, however, establish how any of these laws restrict the use of their property. None of these statutes or goals, on their face, restrict the use of the property. Absent an explanation by the claimants as to how these laws restrict the use of the subject property in a manner that reduces the fair market value of the property, these laws are not discussed further in this report.

OAR 660-004-0040(7)(e)(A) applies only to lands zoned rural residential. The subject property is zoned for Exclusive Farm Use (EFU). As a result, this rule does not apply to the claimants' property.

OAR 660-011-0060(2) generally prohibits the extension or establishment of a new sewer system outside of an urban growth boundary. OAR 660-012-0065 relates to transportation improvements on rural lands. OAR 660-012-0070 establishes exceptions to the requirements of OAR 660-012-0065. The claimants have not established how these rules restrict the desired use of their property, which is to create four parcels with a home on each parcel.

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[3] The claim lists certain rules of the Oregon Department of Environmental Quality (DEQ), but this aspect of the claim was withdrawn by the claimants by e-mail communication with DEQ.

The remainder of this section addresses the claimants' assertions that statutes in ORS 215 and OAR 660-033-0120, 660-033-0130 and 660-033-0135 restrict desired use of their property.

The claim is based generally on Jackson 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.[4] 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 the 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.)

The claimants acquired an interest in the subject property after the adoption of the statewide planning goals, but before the Commission acknowledged Jackson County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged the county's plan and land use regulations when the claimants acquired an interest in the subject property on February 10, 1982, the statewide planning goals, and Goal 3 in particular, applied directly to the claimants' property when they acquired an interest in it.[5]

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[4] The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

[5] The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of each county's comprehensive plan and implementing regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, *rev. den* 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer applied directly to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the claimants' opportunity to divide the subject property when they acquired an interest in 1982 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.

Under the Goal 3 standards in effect on February 10, 1982, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1981 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1981 edition).

No information has been presented in the claim to establish that the claimants' desired division of the subject property into four approximately 10-acre parcels complies with the "commercial" standard for farm parcels under Goal 3 or the standards for non-farm parcels under ORS 215.263 (1981 edition), nor is there any information to establish that the claimants' desired development of multiple dwellings on the subject property satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1981 edition).

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, do not allow the claimants' desired division or development of the subject property. However, the claim does not establish whether or the extent to which the claimants' desired use of the subject property complies with the standards for land divisions and development under the requirements of Goal 3 and ORS 215 in effect when the claimants acquired an interest in the subject property on February 10, 1982.

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 $750,000 as the reduction in the subject property's fair market value due to current regulations. This amount is based on the current assessed value of the subject property and the value of the property if developed under the regulations in effect when the claimants acquired an interest in 1982.[6]

Conclusions

As explained in Section V.1 of this report, the claimants are James and Victoria Reese who acquired an interest in the subject property on February 10, 1982. 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 acquired an interest 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 $750,000.

Without an appraisal or other documentation and without verification of whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when they acquired an interest in 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 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 Jackson County has implemented through its current EFU zone. With the exception of provisions of Goal 3 and ORS 215 in effect when the claimants acquired an interest in the subject property on February 10, 1982, these land use regulations were enacted or adopted after the claimants acquired an interest in the 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 Goal 3 and ORS 215 in effect in 1982, the

[6] The claim states that claimants have made a claim for the loss in value due to them by virtue of their one-half ownership interest or $375,000.

statutory, goal and rule restrictions on division and development of the claimants' property were not in effect when the claimants acquired an interest in it, and therefore, these laws are not exempt under ORS 197.352(3)(E). Provisions of Goal 3 and ORS 215 in effect when the claimants acquired an interest in the subject property in 1982 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimants acquired an interest in the subject property are also exempt under ORS 197.352(3)(E) and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to the claimants' use of the 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. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the 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 47.20-acre property into four approximately 10-acre parcels and to develop a dwelling on each of the parcels. The claim asserts that the laws enforced by the Commission or the department reduce the fair market value of the subject property by $750,000. However, because the claim does not provide an appraisal or other specific documentation establishing 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 they acquired an interest in 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 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 Victoria Reese to use the subject property for a use permitted at the time they acquired an interest in the property on February 10, 1982.

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 Victoria's partition of the 47.20-acre property into four approximately 10-acre parcels or to their development of a dwelling on each of the parcels: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after February 10, 1982. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired an interest in the property on February 10, 1982.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the property for the use described in this report, subject to the standards in effect on February 10, 1982. On that date, the property was subject to applicable provisions of Goal 3 and 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 May 25, 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.