

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF FORESTRY

Final Staff Report

June 22, 2006

STATE CLAIM NUMBER: M 121832

NAMES OF CLAIMANTS: **Darlene B. Fulk and
Matthew J. Jackson**

MAILING ADDRESS: 56630 Lee Valley Rd.
Coquille, Oregon 97423

IDENTIFICATION OF PROPERTY: Township 28S, Range 12W
Section 22,
Tax Lot 1100
Coos County

OTHER CONTACT INFO: None

DATE RECEIVED BY DAS: August 11, 2005

180-DAY DEADLINE: June 26, 2006¹

I. SUMMARY OF CLAIM

See Department of Land Conservation and Development (DLCD) Final Report.

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below the Department of Forestry (ODF) has determined the claim is not valid as to land use regulations administered by ODF or the Oregon Board of Forestry (Board) because none of the laws identified in the claim and administered by the Board or ODF restrict the claimants' right to divide or develop the property for residential use. ORS 527.730 provides that "[n]othing in the Oregon Forest Practices Act shall prevent the conversion of forestland to any other use." The claim submitted by the claimants proposes subdividing the property and constructing one or more houses. To the extent that the claimants may propose a forest operation in conjunction with the conversion, claimants have not submitted a written notification as required by law. Without a notification, ODF is unable to determine whether the laws listed in the claim apply to the claimants' use of the property or restrict their use of the property. As a result, ODF has

¹ This date reflects 180 days for the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of the *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

not enforced an existing state land use regulation with respect to the claimants' use of the property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

See DLCD Final Report.

IV. TIMELINESS OF CLAIM

Requirement

See DLCD Final Report for requirements.

Findings of Fact

The claim identifies certain specific regulations as applying to the claimant's ability to use the land by subdividing it and developing a site on it for residential use. The regulations identified in the claim include portions of Oregon Revised Statute chapter 526, 527, and Oregon Administrative Rules chapter 629. Only laws that were enacted prior to December 2, 2004, the effective date of ORS 197.352, are the basis for the claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

Conclusions

The Claim has been submitted within two years of December 2, 2004, the effective date of ORS 197.352, based on land use regulations enacted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ODF adopts the findings of fact and conclusions of law regarding ownership contained in the DLCD Final Report for this claim.

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 claimants desire compensation or the right to divide the 154.27-acre property into an unspecified number of parcels and to build one or more houses on the property. The claim refers to the following state statutes administered by ODF or the Board as laws that restrict the use of the property as the basis for the claim: 527.610 to 770, 527.990 and 527.992, the Oregon Forest Practices Act. There is no discussion in the claim as to how or why these laws restrict the use of the property that the claimants seek to carry out. The property is zoned Exclusive Farm Use, which allows forest uses. However, the laws listed in the claim only apply to forest operations (which is not the use the claimants have described in their claim).

One of the cited laws, ORS 527.730, Conversion of forestland to other uses, states, “[n]othing in the Oregon Forest Practices Act shall prevent the conversion of forestland to any other use.” No laws enforced by the Board or ODF restrict the division of the property or the establishment of dwellings.

The subject property reportedly includes trees. Certain uses of property are forest “operations” that are regulated under the Forest Practices Act. If trees are harvested for commercial use, some laws listed in the claim will apply to the operation.

A notification of intent to conduct a forest operation is required in order for ODF to determine whether laws it or the Board may enforce apply to the claimants’ intended use of the subject property in a way that restricts the use of the subject property, and reduces its fair market value. No notification has been made.

The claim lists additional zoning ordinances that are administered by Coos County. These ordinances are not administered or enforced by the Board and ODF and are not addressed in this report.

Conclusions

Nothing in the laws that are listed in the claim and enforced or administered by ODF or the Board applies to or restricts the division of the property or residential development of this property by the claimants.

Persons proposing to conduct a forest operation are required to submit a notification of the operation to ODF. Nothing in ORS 197.352 relieves an operator or landowner from this obligation, and until a notification is submitted, ODF is unable to determine whether laws it or the Board administers apply to the claimants’ use of the property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that any laws 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 claimants have not demonstrated that any land use regulations administered by ODF or the Board restrict their use of the subject property or reduce its fair market value.

Conclusions

The claimants have not demonstrated that laws enforced or administered by ODF or the Board restrict their use of this property and thus, have not demonstrated that those laws reduce the fair market value of the subject property.

4. Exemptions under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. These exemptions are set forth in ORS 197.352(3).

Findings of Fact

ORS 197.352(3) exempts laws that were enacted before a claimant acquired their interest in the property. Darlene Fulk acquired an interest in the property on May 27, 1970. Matthew Jackson acquired an interest in the property on May 29, 1972. Most forest practice laws were enacted initially in 1971 and 1972, although some date back to 1941. ODF is unable to determine whether 197.352(3)(E) or other exemptions in 197.352(3) may apply because the claimants have not proposed a use that is subject to these laws.

Some FPA regulations, now in OAR 629, divisions 625, 630, 635, and 640, were enacted to control water pollution resulting from forest operations. ORS 197.352(3)(B) specifically exempts regulations “restricting or prohibiting activities for the protection of public health and safety..., including pollution control.” Such regulations may apply to the property, depending upon the activities the claimants may wish to undertake.

Other FPA regulations cited by the claimants may be exempted under 197.352(3).

Conclusions

ODF concludes that some of the listed land use regulations may be exempt under ORS 197.352(3). Until there is a notification of an operation, however, a final determination of the applicability of the listed laws to a particular forest operation on the property cannot be made.

VI. FORM OF RELIEF

Based on the current record, the claimants are not entitled to relief under ORS 197.352 from ODF or the Board. This claim is denied because neither the Board nor the Department has enforced laws that restrict the use of the property for residential purposes.

VII. NOTICE OF OPPORTUNITY TO COMMENT

ODF issued its draft staff report on this claim on June 6, 2006. OAR 125-145-0100(3), provides 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.

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, AND
THE BOARD AND DEPARTMENT OF FORESTRY
OF THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR) FINAL ORDER
COMPENSATION UNDER ORS 197.352) CLAIM NO. M121832
(BALLOT MEASURE 37) OF)
Darlene Fulk and Matthew Jackson, CLAIMANTS)

Claimants: Darlene Fulk and Matthew Jackson (the Claimants)

Property: Township 28S, Range 12W, Section 22, Tax lot 1100, Coos 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), and the Oregon Department of Forestry (the ODF Report), attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by the Oregon Department of Forestry or the Oregon Board of Forestry, for the reasons set forth in the ODF Report.

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 154.27-acre property or to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. 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 Darlene Fulk acquired the property on May 27, 1970, and when Matthew Jackson acquired his interest in the property on May 29, 1972.
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 when Darlene Fulk acquired the property on May 27, 1970, and when Matthew Jackson acquired his interest in the property on May 29, 1972.
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 (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.

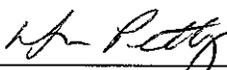
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

This Order is entered by the Oregon Board and Department of Forestry as a final order of the Board under ORS 197.352, OAR 629-001-0057, and OAR Chapter 125, division 145.

FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:


Lane Shetterly, Director
DLCD
Dated this 22nd day of June, 2006.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 22nd day of June, 2006.

FOR THE OREGON BOARD OF
FORESTRY AND THE OREGON
DEPARTMENT OF FORESTRY:


Marvin Brown, State Forester
ODF
Dated this 22nd day of June, 2006

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to the following judicial remedies:

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**

June 22, 2006

STATE CLAIM NUMBER: M121832

NAMES OF CLAIMANTS: Darlene Fulk and Matthew Jackson

MAILING ADDRESS: 56630 Lee Valley Road
Coquille, Oregon 97423

PROPERTY IDENTIFICATION: Township 28S, Range 12W, Section 22
Tax lot 1100
Coos County

DATE RECEIVED BY DAS: August 11, 2005

180-DAY DEADLINE: June 26, 2006¹

I. SUMMARY OF CLAIM

The claimants, Darlene Fulk and Matthew Jackson, seek compensation in the amount of \$800,000 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 154.27-acre property and to develop a dwelling on each parcel. The subject property is located at 56630 Lee Valley Road, along the north fork of the Coquille River, in Coos 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 the claimants' division of the 154.27-acre property and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33. 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 Darlene Fulk acquired the subject property on May 27, 1970, and when Matthew Jackson acquired his interest

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).

in the property on May 29, 1972. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On September 19, 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 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.)

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 11, 2005, for processing under OAR 125, division 145. The claim identifies Goal 3 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

Claimant Darlene Fulk acquired the subject property on May 27, 1970, by a warranty deed. Claimant Matthew Jackson acquired his interest in the subject property on May 29, 1972, as reflected by the circuit court order included with the claim. A 2005 Coos County tax statement and “Consumer Information Report” submitted with the claim provide evidence of the claimants’ current ownership of the subject property.

Conclusions

Claimant Darlene Fulk is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of May 27, 1970. Claimant Matthew Jackson is an “owner” of the subject property as of May 29, 1972.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(11) 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 subject property and build one or more residential homes on the resulting parcels. According to the claim, Exclusive Farm Use (EFU) zoning prevents them from doing so. The subject property is zoned EFU according to the county’s zoning map.²

The claim is based generally on Coos County’s EFU zoning and the applicable provisions of state law that require such zoning. The claimants’ property is zoned EFU as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants’ property is “agricultural land” as defined by Goal 3.³ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into

² See http://www.co.coos.or.us/planning/zone_maps/ZoneMaps_JPEG/T-28/28-12.jpg.

³ The claimants’ property is “agricultural land” because it contains Natural Resources Conservation Service Class I-IV soils.

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.)

Caimant Darlene Fulk acquired the subject property on May 27, 1970, and claimant Matthew Jackson acquired his interest in the property on May 29, 1972, prior to the adoption of statewide planning goals and their implementing statutes and rules.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were enacted or adopted after the claimants acquired the subject property in 1970 and 1972, and do not allow the desired division and development of the property. These laws restrict the use of the subject property relative to the uses allowed when the claimants acquired the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. There may be other laws that currently apply to the claimants' use of the subject property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of 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 the land use regulation(s) (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 \$800,000 as the reduction in the subject property's fair market value due to the regulations. This amount is based on an estimate of the value of the subject

property performed for the claimants for listing purposes. The subject property was acquired for \$36,000 in 1970 and has a home constructed on it.

Conclusions

As explained in Section V.(1) of this report, the claimants are Darlene Fulk who acquired the subject property on May 27, 1970, and Matthew Jackson who acquired his interest in the property on May 29, 1972. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants acquired the subject property restrict the claimants' desired use of the property. The claimants estimate that the effect of the regulation(s) on the fair market value of the subject property is a reduction of \$800,000.

Without an appraisal or further documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the property. Nevertheless, based on the evidence in the record for this claim, 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 Coos County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after the claimants acquired the subject property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on division and development of the claimants' property were in effect when Darlene Fulk acquired it in 1970 and Matthew Jackson acquired his interest in the property in 1972. 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. 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 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).

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. Due to the location of the subject property along the north fork of the Coquille River, other state laws may apply depending on the specific use that the claimants wish to carry out. 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 laws that restrict the use of the subject 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 subject property permitted at the time the present 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' desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$800,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) 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 has determined 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 the claimants to use the subject property for a use permitted when Darlene Fulk acquired the property on May 27, 1970, and when Matthew Jackson acquired his interest in the property on May 29, 1972.

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 154.27-acre property or to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. 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 Darlene Fulk acquired the property on May 27, 1970, and when Matthew Jackson acquired his interest in the property on May 29, 1972.
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 when Darlene Fulk acquired the property on May 27, 1970, and when Matthew Jackson acquired his interest in the property on May 29, 1972.
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 (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 June 6, 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.