

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. M122278A
(BALLOT MEASURE 37) OF	)	
Clyde and Gale Moore, CLAIMANTS	)	

Claimants: Clyde and Gale Moore (the Claimants)

Property: Township 36S, Range 01W, Section 13, Tax lots 800 and 802, 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 Clyde and Gale Moore's division of the subject 39.97-acre property into a maximum of eight parcels of 5 to 20 acres each and to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after March 29, 1978. 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 the property on March 29, 1978.
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 March 29, 1978. 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 (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 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 21<sup>st</sup> day of July, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 21<sup>st</sup> day of July, 2006.

## NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352<sup>1</sup>, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

### FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

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<sup>1</sup> By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

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

July 21, 2006

**STATE CLAIM NUMBER:** M122278  
Report A

**NAMES OF CLAIMANTS:** Clyde and Gale Moore

**MAILING ADDRESS:** 655 East Vilas Road  
Central Point, Oregon 97502

**PROPERTY IDENTIFICATION:<sup>1</sup>** Township 36S, Range 01W, Section 13  
Tax lots 800 and 802  
Jackson County

**OTHER CONTACT INFORMATION:** Mark S. Bartholomew  
Hornecker, Cowling,  
Hassen & Heysell, LLP  
717 Murphy Road  
Medford, Oregon 97504

**DATE RECEIVED BY DAS:** September 12, 2005

**180-DAY DEADLINE:** July 28, 2006<sup>2</sup>

**I. SUMMARY OF CLAIM**

The claimants, Clyde and Gale Moore, seek compensation in the amount of \$1.2 million for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the subject property, consisting of tax lots 800 and 802 and totaling 39.97 acres, into a maximum of eight parcels of approximately 5 to 20 acres each and to develop a dwelling on each parcel. The subject property is located at the geographic coordinates listed above in Jackson County.

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<sup>1</sup> Four tax lots were identified in claim M122278. This staff report only addresses the two tax lots identified above. The remaining two tax lots are addressed in companion Report B.

<sup>2</sup> This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

## 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 Clyde and Gale Moore's division of the subject 39.97-acre property into a maximum of eight parcels of 5 to 20 acres each 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, enacted or adopted after March 29, 1978. 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 the property on March 29, 1978. (See the complete recommendation in Section VI. of this report.)

## III. COMMENTS ON THE CLAIM

### Comments Received

On October 11, 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 September 12, 2005, for processing under OAR 125, division 145. The claim identifies Goals 3, 4, 5, 11 and 14; ORS 92, 195, 197 and 215; OAR 660-004-0040(7)(e)(A), 660-011-0060(2), 660-012-0065(3) and 660-012-0070; and all provisions of OAR 660-033-0120, 660-033-0130 and 660-033-0135 as the basis for the claim.<sup>3</sup> 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, Clyde and Gale Moore, acquired the subject property (tax lots 800 and 802) on March 29, 1978, as reflected by a memorandum of agreement included with the claim.<sup>4</sup> The Jackson County Assessor’s Office confirms the claimants’ current ownership of the subject property.

## **Conclusions**

The claimants, Clyde and Gale Moore, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of March 29, 1978.

### **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.

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<sup>3</sup> The claim also included a reference to OAR 340-096-0020 and 340-096-0034. The claimants’ attorney, through a May 12, 2006, e-mail, withdrew the claim with regard to these rules that are administered by the Department of Environmental Quality (DEQ). As a result, DEQ will not prepare an order for this claim.

<sup>4</sup> The claimants created tax lot 802 from parent tax lot 800 in 1981 through a partition plat.

## **Findings of Fact**

The claim indicates that the claimants desire to divide the subject 39.97-acre property into a maximum of eight parcels of 5 to 20 acres each and to develop a dwelling on each parcel. The claim identifies Goals 3, 4, 5, 11 and 14; the statutes contained in ORS 92, 195, 197 and 215; the rules contained in OAR 660-004-0040(7)(e)(A), 660-011-0060(2), 660-012-0065(3), 660-012-0070; and all provisions of OAR 660-033-0120, 660-033-0130 and 660-033-0135 as restricting the desired division and development of the subject property.<sup>5</sup>

The claim is based generally on Jackson County's current Exclusive Farm Use (EFU) zone and the applicable provisions of state law that require such zoning. The claimants' property is zoned EFU as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.<sup>6</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215. At the time the claimants acquired tax lots 800 and 802, they were zoned F-5 by Jackson County. The department has not determined whether the F-5 zone, as administered by the county, was a qualified farm use zone under ORS 308.370(1) (1977 edition). If so, then the use of the subject property was limited to the uses allowed under ORS 215.203 and 215.213 (1977 editions).

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 (HB) 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 and 660-033-0130.)

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<sup>5</sup> The claim lists Goals 4, 5, 11 and 14, ORS 92, 195 and 197 and OAR 660-004-0040(7)(e)(A), 660-011-0060(2), 660-012-0065(3) and 660-012-0070, as restricting the claimants' desired use of the property but does not establish how each of these regulations applies to and restricts the use of the subject property in a manner that reduces the property's fair market value. On their face, most of the regulations cited in the claim either do not apply to the subject property at all or do not restrict the claimants' division and residential development of the property. In the absence of any explanation by the claimants as to how these regulations restrict the use of the subject property in a manner that reduces the property's fair market value, this report addresses only those regulations that the department finds are applicable to and restrict the claimants' use of the subject property, based on the claimants' asserted desired use.

<sup>6</sup> The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

Pursuant to HB 3326, these rules expanded the Commission's authority to allow the partition of EFU-zoned property into lots or parcels smaller than the minimum size established under ORS 215.780 for the purpose of siting non-farm dwellings.

The claimants acquired 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 the subject property on March 29, 1978, the statewide planning goals, and Goal 3 in particular, applied directly to the claimants' use of their property when they acquired it, along with the statutes in ORS 215 that were then in effect.<sup>7</sup>

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 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, not subdivisions, 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 it in 1978 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 215.243.

Under the Goal 3 standards in effect on March 29, 1978, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition).

No information has been presented in the claim to establish that the claimants' desired division of the subject property into eight approximately five-acre parcels complies with the "commercial" standard for farm parcels under Goal 3 or the standards for non-farm parcels under ORS 215.263 (1973 edition), nor is there any information to establish that the claimants' desired development of dwellings on each parcel satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1973 edition).

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<sup>7</sup> 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).

## **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 the property on March 29, 1978.

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 \$1.2 million<sup>8</sup> as the reduction in the subject property's fair market value due to the regulation(s). This amount is based on the claimants' research of the current real estate market and their estimate of \$200,000 to \$275,000 per parcel.

### **Conclusions**

As explained in Section V.(1) of this report, the claimants are Clyde and Gale Moore who acquired the subject property on March 29, 1978. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the 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 may 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 \$1.2 million.

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 the property, 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

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<sup>8</sup> This amount represents total compensation sought for all four tax lots subject to this claim. This report addresses only two of the tax lots. The other two tax lots are addressed in companion Report B.

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 the subject property on March 29, 1978, these land use regulations were enacted or adopted after the claimants acquired the property.

#### **Conclusions**

Although a conceptual development proposal for the subject property was submitted with the claim, 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 1978, the statutory, goal and rule restrictions on division and development of the claimants' property were not in effect when the claimants acquired 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 the subject property in 1978 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimants acquired 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 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 \$1.2 million. 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, 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 the property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the property was allowed under the standards in effect when they acquired the property. 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 Clyde and Gale Moore to use the subject property for a use permitted at the time they acquired the property on March 29, 1978.

### **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 Clyde and Gale Moore's division of the subject 39.97-acre property into a maximum of eight parcels of 5 to 20 acres each and to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after March 29, 1978. 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 the property on March 29, 1978.
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

March 29, 1978. 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 (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 July 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.

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

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COMPENSATION UNDER ORS 197.352                )                    CLAIM NO. M122278B  
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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.

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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:

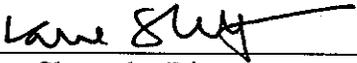
1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Clyde and Gale Moore's development of an additional dwelling on the 21.92-acre subject property: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after December 24, 1990. These land use regulations will not apply to the claimants' use of the subject property only to the extent necessary to allow them to use the property for the use described in this report, and only to the extent that use was permitted when they acquired the property on December 24, 1990.

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 December 24, 1990. On that date, the property was subject to compliance with Jackson County's acknowledged EFU zone, and the applicable provisions of Goal 3, ORS 215 and OAR 660, division 5, then in effect.

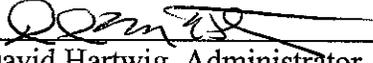
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants 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 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 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 21<sup>st</sup> day of July, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:

  
\_\_\_\_\_  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 21<sup>st</sup> day of July, 2006.

## NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352<sup>1</sup>, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

### FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

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<sup>1</sup> By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
Final Staff Report and Recommendation**

July 21, 2006

**STATE CLAIM NUMBER:** M122278  
Report B

**NAMES OF CLAIMANTS:** Clyde and Gale Moore

**MAILING ADDRESS:** 655 East Vilas Road  
Central Point, Oregon 97502

**PROPERTY IDENTIFICATION:<sup>1</sup>** Township 36S, Range 01W, Section 13  
Tax lots 803 and 805  
Jackson County

**OTHER CONTACT INFORMATION:** Mark S. Bartholomew  
Hornecker, Cowling,  
Hassen & Heysell, LLP  
717 Murphy Road  
Medford, Oregon 97504

**DATE RECEIVED BY DAS:** September 12, 2005

**180-DAY DEADLINE:** July 28, 2006<sup>2</sup>

**I. SUMMARY OF CLAIM**

The claimants, Clyde and Gale Moore, seek compensation in the amount of \$1.2 million for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to use the subject property, consisting of tax lots 803 and 805 totaling 21.92 acres, for the development of an additional dwelling. The subject property is located at the geographic coordinates listed above in Jackson County.

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<sup>1</sup> Four tax lots were identified in claim M122278. This staff report only addresses the two tax lots identified above. The remaining two tax lots are addressed in companion Report A.

<sup>2</sup> This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

## 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 Clyde and Gale Moore's development of an additional dwelling on the 21.92-acre subject property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after December 24, 1990. 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 the property on December 24, 1990. (See the complete recommendation in Section VI. of this report.)

## III. COMMENTS ON THE CLAIM

### Comments Received

On October 11, 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 September 12, 2005, for processing under OAR 125, division 145. The claim identifies Goals 3, 4, 5, 11 and 14; ORS 92, 195, 197 and 215; OAR 660-004-0040(7)(e)(A), 660-011-0060(2), 660-012-0065(3) and 660-012-0070; and all provisions of 660-033-0120, 660-033-0130 and 660-033-0135 as the basis for the claim.<sup>3</sup> 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, Clyde and Gale Moore, acquired the subject property (tax lots 803 and 805) on December 24, 1990, as reflected by a quitclaim deed included with the claim.<sup>4</sup> The claimants first acquired the parent property, tax lot 800, on March 29, 1978, as reflected by a memorandum of agreement included with the claim; however, they then conveyed it to Jack and Maxine Rash. Maxine Rash is Clyde Moore’s mother. The subject property was reconveyed to the Moores by the Rashs on the date previously indicated. The Jackson County Assessor’s Office confirms the claimants’ current ownership of the subject property.

### **Conclusions**

The claimants, Clyde and Gale, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of December 24, 1990. Clyde and Gale Moore are also “family members” as defined by ORS 197.352(11)(A) and acquired the subject property on March 29, 1978, for purposes of compensation.

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<sup>3</sup> The claim also included a reference to OAR 340-096-0020 and 340-096-0034. The claimants’ attorney, through a May 12, 2006, e-mail, withdrew the claim with regard to these rules that are administered by the Department of Environmental Quality (DEQ). As a result, DEQ will not prepare an order for this claim.

<sup>4</sup> The claimants created tax lot 803 from parent tax lot 800 in 1981 through a partition plat. The claimants conveyed their interest in tax lot 803 to their family members, Jack and Maxine Rash, on October 3, 1987, as reflected by a notice of contract included with the claim. Jack and Maxine Rash created tax lot 805 from tax lot 803 and were approved for a non-farm dwelling. However, tax lot 805 was officially created and approved by Jackson County in 1991 through a partition plat. Jack and Maxine Rash conveyed their interest in both tax lots 803 and 805 back to the claimants, Clyde and Gale Moore, on December 24, 1990.

## **2. The Laws That are the Basis for This Claim**

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants' use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

### **Findings of Fact**

The claim indicates that the claimants desire to use the subject 21.92-acre property for a use consistent with land use regulations in effect on December 24, 1990. In the absence of a more specific stated intent, the department is treating the desired use as the development of an additional dwelling. The claim identifies Goals 3, 4, 5, 11 and 14; the statutes contained in ORS 92, 195, 197 and 215; the rules contained in OAR 660-004-0040(7)(e)(A), 660-011-0060(2), 660-012-0065(3) and 660-012-0070; and all provisions of OAR 660-033-0120, 660-033-0130 and 660-033-0135 as diminishing the subject property's value and restricting the desired development.<sup>5</sup>

The claim is based generally on Jackson County's current Exclusive Farm Use (EFU) zone and the applicable provisions of state law that require such zoning. The claimants' property is zoned EFU as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.<sup>6</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.284 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, establish standards for the development of dwellings on existing or proposed parcels on EFU-zoned land.

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 (HB) 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 and 660-033-0130.) Pursuant to HB 3326, these rules expanded the Commission's authority to allow the partition of EFU-zoned

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<sup>5</sup> The claim lists Goals 4, 5, 11 and 14, ORS 92, 195 and 197 and OAR 660-004-0040(7)(e)(A), 660-011-0060(2), 660-012-0065(3) and 660-012-0070, as restricting the claimants' desired use of the property but does not establish how each of these regulations applies to and restricts the use of the subject property in a manner that reduces the property's fair market value. On their face, most of the regulations cited in the claim either do not apply to the subject property or do not restrict the use of the property. In the absence of any explanation by the claimants as to how these regulations restrict the use of the subject property in a manner that reduces the property's fair market value, this report addresses only those regulations that the department finds are applicable to and restrict the claimants' use of the subject property, based on the claimants' asserted desired use.

<sup>6</sup> The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

property into lots or parcels smaller than the minimum size established under ORS 215.780 for the purpose of siting non-farm dwellings.

The claimants first acquired 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 they first acquired the subject property on March 29, 1978, the statewide planning goals, and Goal 3 in particular, applied directly to the claimants' property when they first acquired it.<sup>7</sup>

### **Conclusions**

The current zoning requirements and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, do not allow the claimants' desired 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 development under the requirements of Goal 3 and ORS 215 in effect when the claimants first acquired the subject property on March 29, 1978.

### **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 \$1.2 million<sup>8</sup> as the reduction in the subject property's fair market value due to the regulation(s). This amount is based on the claimants' research of the current real estate market and their estimate of \$200,000 to \$275,000 per parcel.

### **Conclusions**

As explained in Section V.(1) of this report, the claimants are Clyde and Gale Moore whose family acquired the subject property on March 29, 1978. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property and have

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<sup>7</sup> 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).

<sup>8</sup> This amount represents total compensation sought for all four tax lots subject to this claim. This report addresses two of the tax lots. The other two tax lots are addressed in companion Report A.

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' family acquired the subject property may 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 \$1.2 million.

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 the claimants' family acquired the property, 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 it is more likely than not that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the claimants' family acquired the property.

#### **4. Exemptions Under ORS 197.352(3)**

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

#### **Findings of Fact**

The claim is based on state land use regulations that restrict the use of the subject property relative to the uses permitted when the claimants' family acquired the property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Jackson County has implemented through its current EFU zone. With the exception of provisions of Goal 3 and ORS 215, these land use regulations were enacted or adopted after the claimants' family acquired the subject property.

#### **Conclusions**

It appears that none of the general statutory, goal and rule restrictions on development of the subject property were in effect when the claimants' family acquired the property on March 29, 1978, with the exception of provisions of Goal 3 and ORS. As a result these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimants' family acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

### **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the 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' 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 \$1.2 million. 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. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when they acquired the property. 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 Clyde and Gale Moore to use the subject property for a use permitted at the time they acquired the property on December 24, 1990.

At the time the claimants acquired the subject property in 1990, it was zoned EFU by Jackson County, which was acknowledged by the Commission for compliance with Goal 3 on May 16, 1983. When the claimants acquired the subject property, the desired use of the property was governed by the county's EFU zone and the applicable provisions of ORS 215 and OAR 660, division 5, then in effect.

In addition to the applicable provisions of Goal 3, ORS 215 and OAR 660, division 5, in effect on December 24, 1990, there may be other laws that 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. 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.

## **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 Clyde and Gale Moore's development of an additional dwelling on the 21.92-acre subject property: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after December 24, 1990. These land use regulations will not apply to the claimants' use of the subject property only to the extent necessary to allow them to use the property for the use described in this report, and only to the extent that use was permitted when they acquired the property on December 24, 1990.
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 December 24, 1990. On that date, the property was subject to compliance with Jackson County's acknowledged EFU zone, and the applicable provisions of Goal 3, ORS 215 and OAR 660, division 5, 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 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 July 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.