

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. M124418  
(BALLOT MEASURE 37) OF )  
Joe and Joan Lang, CLAIMANTS )

Claimants: Joe and Joan Lang (the Claimants)

Property: Township 12S, Range 1W, Section 10, Tax lots 1904, 1905 and 1906, Linn 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 Joe and Joan Lang's partition of the 23.55-acre subject property into four parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6 and 33, enacted or adopted after the claimants each acquired their present interest in each of the three subject tax lots. 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 Joe Lang acquired tax lot 1904 on February 28, 1978, tax lot 1905 in 2003, and tax lot 1906 in 2005; and when Joan Lang acquired tax lot 1904 in 2004, and tax lots 1905 and 1906 in 2005. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow Joe Lang to use tax lots 1905 and 1906 in the manner set forth in the claim, and will not allow Joan Phyllis Lang to use any of the subject tax lots in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization the claimants to use the property for the use described in this report, subject to the standards in effect when they each

acquired their present interest in the subject property. In 1978, when Joe Lang acquired tax lot 1904, the property was subject to applicable provisions of Goals 3 and 4 and ORS 215 then in effect. In 2003, 2004 and 2005, when Joe Lang acquired tax lots 1905 and 1906 and when Joan Phyllis Lang acquired the subject tax lots, the property was subject to the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6 and 33, currently in effect.

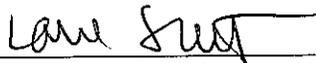
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants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

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

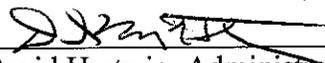
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable 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 7<sup>th</sup> day of September, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
\_\_\_\_\_  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 7<sup>th</sup> day of September, 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, 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.”

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

September 7, 2006

**STATE CLAIM NUMBER:** M124418

**NAMES OF CLAIMANTS:** Joe and Joan Lang

**MAILING ADDRESS:** 41810 Cutoff Drive  
Lebanon, Oregon 97355

**PROPERTY IDENTIFICATION:** Township 12S, Range 1W, Section 10  
Tax lots 1904, 1905 and 1906  
Linn County

**OTHER CONTACT INFORMATION:** Joel D. Kalberer  
Weatherford, Thompson, Cowgill,  
Black & Schultz, PC  
PO Box 667  
Albany, Oregon 97321

**DATE RECEIVED BY DAS:** March 16, 2006

**180-DAY DEADLINE:** September 12, 2006

**I. SUMMARY OF CLAIM**

The claimants, Joe and Joan Lang, seek compensation in the amount of \$213,680 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 23.55-acre subject property into four parcels and to develop a single-family dwelling on each parcel. The subject property consists of tax lots 1904, 1905 and 1906 and is located at 32555 Bellinger Scale Road, near Lebanon, in Linn 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 Joe and Joan Lang's partition of the 23.55-acre subject property into four parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6 and 33, enacted or adopted after the claimants each

acquired their present interest in each of the three subject tax lots. 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 Joe Lang acquired tax lot 1904 on February 28, 1978, tax lot 1905 on June 10, 2003, and tax lot 1906 on January 21, 2005; and when Joan Lang acquired tax lot 1904 on October 1, 2004, and tax lots 1905 and 1906 on January 21, 2005. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow Joe Lang to use tax lots 1905 and 1906 or Joan Lang to use any of the subject tax lots in the manner set forth in the claim. (See the complete recommendation in Section VI of this report.)

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

#### **Comments Received**

On July 14, 2006, 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, no written comments were received in response to the 10-day notice.

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

#### **Findings of Fact**

This claim was submitted to DAS on March 16, 2006, for processing under OAR 125, division 145. The claim identifies Linn County's Exclusive Farm Use (EFU) zoning, ORS 215, OAR 660-033-0130(4) and 660-033-0135 and "all other applicable Statewide Planning Goals, ordinances and statutes in effect after the claimant took ownership in the property that may in any way affect the subdivision of the property and placement of non-farm dwellings on each lot," as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

## **Conclusions**

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

## **V. ANALYSIS OF CLAIM**

### **1. Ownership**

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

### **Findings of Fact**

The claimants, Joe and Joan Lang, acquired the subject property on February 28, 1978, as reflected by a memorandum of land sale contract included with the claim. Although the property had not been legally partitioned in 1995, the claimants conveyed tax lot 1905 to their son, Jonah Lang, and tax lot 1906 to their daughter, Jessica Lang, as reflected by deeds obtained from the Linn County Planning and Building Department. Deeds from the building department also reflect that Jonah Lang quitclaimed tax lot 1905 to Joe Lang on June 10, 2003. On January 21, 2005, Jonah Lang transferred that same tax lot by bargain and sale deed to Joe and Joan Lang. Also on January 21, 2005, Jessica Lang transferred tax lot 1906 to Joe and Joan Lang. On September 29, 2004, Joe and Joan Lang conveyed tax lot 1904 to Joe Lang. On October 1, 2004, Joe Lang conveyed tax lot 1904 to himself and Joan Lang. The Linn County Assessor’s Office confirms the claimants’ current ownership of the subject property.

### **Conclusions**

The claimants, Joe and Joan Lang, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). Joe Lang has been an owner of tax lot 1904 since February 28, 1978, tax lot 1905 since June 10, 2003, and tax lot 1906 since January 21, 2005. Joan Lang has been an owner of tax lot 1904 since October 1, 2004, and tax lots 1905 and 1906 since January 21, 2005. The subject property has been owned by a “family member” of the Lang family, as that term is defined by ORS 197.352(11)(A), since February 28, 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.

## Findings of Fact

The claim indicates that the claimants desire to divide the 23.55-acre subject property into four parcels and to develop a dwelling on each parcel. It indicates that the desired use is not allowed under current land use regulations.<sup>1</sup>

The claim is based generally on the applicable provisions of state law that require farm-forest zoning. The claimants' property is zoned Farm-Forest by Linn County, as required by Goal 4 and the implementing provisions of OAR 660-006-0050 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.<sup>2</sup> Depending on the predominant use on that date, the property is subject to either the requirements for dwellings applicable under exclusive farm use zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

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

The Lang family first acquired the subject property in 1978, after the adoption of the statewide planning goals, but before the Commission acknowledged Linn County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.<sup>3</sup>

Because the Commission had not acknowledged the county's plan and land use regulations when the Lang family acquired the subject property on February 28, 1978, the applicable statewide planning goals would have applied directly to any development application for the claimants' property.<sup>4</sup>

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<sup>1</sup> The claimants summarily cited numerous state land use laws as applicable to this claim, but did not establish how the laws either apply to the claimants' desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of these regulations either do not apply to the claimants' property or do not restrict the claimants' desired use of the property with the effect of reducing its 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>2</sup> No information was provided to the department regarding the predominant use of the property on January 1, 1993.

<sup>3</sup> Linn County's comprehensive plan was acknowledged on July 18, 1985.

<sup>4</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 land use 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 569 (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 directly applied 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

As adopted in 1975, Goal 3 required that agricultural lands be preserved and zoned for EFU pursuant to ORS 215. Goal 4, as adopted in 1975, required that forest lands be designated for forest uses. Depending on whether the property would have been subject to Goal 3 or 4 when acquired, it would have been subject to either EFU zoning pursuant to ORS 215 or forest zoning adequate to retain forest lands for forest uses.

If subject to Goal 3, the state standards for a division of land required that the created lots or parcels be of a size "appropriate for the continuation of the existing commercial agricultural enterprise within the area." (See Goal 3.) Further, ORS 215.263 (1975 edition) required that all land divisions subject to EFU zoning comply with the legislative intent in ORS 215.243 (Agricultural Land Use Policy). Thus, under Goal 3, the opportunity to divide the subject property when acquired by the Lang family on February 28, 1978, was limited to new lots or parcels that were (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area, and (2) shown to be consistent with the legislative intent in ORS 215. At that time, under Goal 3, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1975 edition),<sup>5</sup> and non-farm dwellings were subject to ORS 215.213(3) (1975 edition).<sup>6</sup> Other uses were authorized and governed by the applicable provisions under Goal 3 and ORS 215.213.

If subject to Goal 4, the state standards required uses to "conserve forest lands for forest uses." Specifically, Goal 4 only allowed land divisions that would protect commercial forest lands for commercial forest uses. Dwellings in forest zones could only be allowed if found to be "necessary and accessory" to one of the enumerated forest uses listed in Goal 4.<sup>7</sup>

## **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established under Goal 4 for lands zoned for mixed farm-forest use and the statutory and rule restrictions under applicable provisions of ORS 215 and OAR 660, divisions 6 and 33, were enacted or adopted

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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); *Kenagy v. Benton County*, 115 Or App 131 (1992).

<sup>5</sup> Under ORS 215.213, a farm dwelling could be established on agricultural land only if the farm use to which the dwelling relates exists (*Newcomer v. Clackamas County*, 92 Or App 174, modified 94 Or App 33 (1988) and *Matteo v. Polk County*, 11 Or LUBA 259, 263 (1984), affirmed without opinion 70 Or App 179 (1984)). Guidance on the application of the statutory standards for farm and non-farm dwellings in EFU zones can be found in the Commission rules (OAR 660, division 5, adopted on July 21, 1982, amended on June 7, 1986, and repealed on August 7, 1993).

<sup>6</sup> When determining whether land is "generally unsuitable for the production of farm crops and livestock" under ORS 215.213(3), the entire parcel or tract must be evaluated rather than a portion thereof. *Smith v. Clackamas County*, 313 Or 519 (1992).

<sup>7</sup> Goal 4 prohibited uses that were not enumerated by Goal 4 as permissible uses for forest lands as well as those that were not necessary and accessory to an enumerated forest use. *Lamb v. Lane County*, 7 Or LUBA 137 (1983). Dwellings in forest lands were required to be "necessary and accessory" to show that such dwellings complied with the Goal 4 requirement that local land use regulations must "conserve forest lands for forest uses." *1000 Friends v. LCDC (Curry County)*, 301 Or 447 (1986). A dwelling that may "enhance" forest uses is not "necessary and accessory" to a forest use to the extent required by Goal 4. *1000 Friends of Oregon v. LCDC (Lane County)*, 305 Or 384 (1988). For additional guidance, the Goal 4 provisions were interpreted under OAR 660, division 6, effective on September 1, 1982, in *1000 Friends of Oregon v. LCDC (Lane County)* and in *1000 Friends v. LCDC (Curry County)*.

after the Lang family first acquired the subject property in 1978, and do not allow the desired division and development of the property.

### **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 \$213,680 as the reduction in the subject property’s fair market value due to the regulations that restrict the claimants’ use of the property. This amount is based on the opinion of the Linn County Assessor and Tax Collector that if the subject property were divided into four parcels of approximately five acres each, the value, for property tax purposes, would increase to approximately \$325,160.<sup>8</sup>

#### **Conclusions**

As explained in Section V.(1) of this report, the claimants are Joe and Joan Lang, whose family first acquired the subject property on February 28, 1978. 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 Lang family first acquired the subject property restrict the claimants’ desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$213,680.

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 Lang family first 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 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 Lang family first 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, including applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6 and 33,

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<sup>8</sup> A May 10, 2005, letter from the Linn County Assessor/Tax Collector to the Linn County Planning and Building Department Director.

which Linn County has implemented through its current Farm-Forest zone. With the exception of provisions of Goals 3 and 4 and ORS 215 in effect when the Lang family first acquired the subject property on February 28, 1978, these land use regulations were enacted or adopted after the Lang family first acquired the property.

### **Conclusions**

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the Lang family first acquired it in 1978. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the Lang family first acquired the subject property are exempt under ORS 197.352(3)(E) and will continue to apply to Joe Lang's use of the property. In addition, the department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. The provisions include fire protection standards for dwellings and for surrounding forest zones. ORS 197.352 (3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . ." To the extent they are applicable to the claimants' property, the siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to Joe Lang's use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When Joe Lang seeks 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).

## **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 \$213,680. 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 a fair market 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 the Lang family first 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 Joe Lang to use tax lot 1904 for a use permitted at the time he acquired it on February 28, 1978, and to use tax lots 1905 and 1906 for a use permitted when he acquired these tax lots in 2003 and 2005; and to allow Joan Lang to use the subject property for a use permitted at the time she acquired tax lot 1904 in 2004 and tax lots 1905 and 1906 in 2005.

At the time Joe Lang acquired his present interest in tax lot 1905 and 1906 and Joan Lang acquired her present interest in all of the subject tax lots, the subject property was zoned Farm-Forest by Linn County and subject to the current lot size and dwelling standards under Goal 3 or 4, ORS 215 and OAR 660, division 6 or 33, and as described in Section V.(2) of this report.

In addition to the applicable provisions of Goals 3 and 4 and ORS 215 in effect in 2003 and 2005, and other laws in effect when the claimants acquired their present interest in subject property, there may be other laws that apply to the claimants' use of the property that have not been identified in the claim. This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in their claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

## **Conclusions**

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Joe and Joan Lang's partition of the 23.55-acre subject property into four parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6 and 33, enacted or adopted after the claimants each acquired their present interest in each of the three subject tax lots. 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 Joe Lang acquired tax lot 1904 on February 28, 1978, tax lot 1905 in 2003, and tax lot 1906 in 2005; and when Joan Lang acquired tax lot 1904 in 2004, and tax lots 1905 and 1906 in 2005. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not

allow Joe Lang to use tax lots 1905 and 1906 in the manner set forth in the claim, and will not allow Joan Phyllis Lang to use any of the subject tax lots in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization the claimants to use the property for the use described in this report, subject to the standards in effect when they each acquired their present interest in the subject property. In 1978, when Joe Lang acquired tax lot 1904, the property was subject to applicable provisions of Goals 3 and 4 and ORS 215 then in effect. In 2003, 2004 and 2005, when Joe Lang acquired tax lots 1905 and 1906 and when Joan Phyllis Lang acquired the subject tax lots, the property was subject to the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6 and 33, currently in effect.

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

4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (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 August 22, 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.