



Oregon

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Department of Land Conservation and Development

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May 3, 2007



To: Claimants and Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130661

*Claimants: Audry L. Lynch, William H. Odegaard, Gerald E. Odegaard, Donna M. Spencer,
Helen G. Yakely and Maurice Odegaard*

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Final Staff Report and Recommendation of the Department of Land Conservation and Development, and the Final Order.

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

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. M130661
(BALLOT MEASURE 37) OF)
Audry L. Lynch, William H. Odegaard,)
Gerald E. Odegaard, Donna M. Spencer,)
Helen G. Yakely, and Maurice Odegaard, CLAIMANTS)

Claimants: Audry L. Lynch, William H. Odegaard, Gerald E. Odegaard, Donna M. Spencer, Helen G. Yakely, and Maurice Odegaard (the Claimants)

Property: Township 39S, Range 18E, Tax lots 4300, 4500, 4600 and 4700, Lake 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 (DLCDC) 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 DLCDC (the DLCDC Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is approved as to laws administered by DLCDC and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCDC Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to the claimants' division of the 475.57-acre subject property into thirty-five 6- to 40-acre parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 5, ORS 215 and OAR 660, divisions 23, and 33, enacted or adopted after the claimants acquired the subject property. 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 interest in the property on May 19, 1974.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on May 19, 1974. On that date, the property was subject to the applicable

provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.519 (1973 edition).

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.

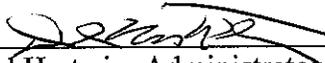
6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

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


Cora R. Parker, Deputy Director
DLCD
Dated this 4th day of May, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 4th day of May, 2007.

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

May 4, 2007

STATE CLAIM NUMBER: M130661

NAMES OF CLAIMANTS: Audry L. Lynch,
William H. Odegaard
Gerald E. Odegaard
Donna M. Spencer
Helen G. Yakely
Maurice Odegaard

MAILING ADDRESSES: Audry Lynch
PO Box 601
Cathlamet, Washington 98612

William Odegaard
HC 60 Box 1988
Lakeview, Oregon 97630

Gerald Odegaard
2191 Bullock Road
Oakland, Oregon 97462

Donna Spencer
1309 SW 36th Street
Albany, Oregon 97321

Helen Yakely
3325 Lile Street
Oceanside, California 92056

Maurice Odegaard
82245 Rattlesnake Road
Dexter, Oregon 97431

PROPERTY IDENTIFICATION: Township 39S, Range 18E
Tax lots 4300, 4500, 4600 and 4700
Lake County

DATE RECEIVED BY DAS: November 9, 2006

180-DAY DEADLINE: May 8, 2007

I. SUMMARY OF CLAIM

The claimants, Audry Lynch, William, Gerald and Maurice Odegaard, Donna Spencer and Helen Yakely, seek compensation in the amount of \$1,170,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 475.57-acre subject property into thirty-five 6- to 40-acre parcels and to develop a dwelling on each parcel.¹ The subject property is located at 18029 Odegaard Road in Lake County. Tributaries of Antelope Creek run through tax lot 4500. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to the claimants' division of the 475.57-acre subject property into thirty-five 6- to 40-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 5 (Natural Resources, Scenic and Historic and Open Space), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 23, and 33, enacted or adopted after the claimants acquired the subject property. 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 interest in the property on May 19, 1974. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 28, 2007, 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.

¹ As shown on the plan for division of Odegaard, Et. Al Ranch included with the claim, the claimants' desired use of the 475.57-acre subject property is to create: one approximately six-acre parcel; twenty-two 7.5-acre parcels; one 7.7-acre parcel; two approximately 20-acre parcels; one approximately 25-acre parcel; three 26.6-acre parcels; four approximately 30-acre parcels; and one approximately 40-acre parcel. The claim also suggests that the claimants desire to transfer ownership of some of the newly created parcels for development. In effect, the claimants request that a decision of the department to "not apply" (waive) certain laws as set forth in this report be transferable with the property. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. A determination of transferability is beyond the scope of relief that the department may grant under ORS 197.352. The Oregon Department of Justice has advised the department that "[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost."

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 November 9, 2006, for processing under OAR 125, division 145. The claim identifies Goal 5, ORS 92 and 197, Lake County's Exclusive Agriculture A-2 zone and County Ordinance 10CC-95 as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for the 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, Audry Lynch, William, Gerald and Maurice Odegaard, Donna Spencer (formerly Odegaard) and Helen Yakely (formerly Odegaard), acquired a future interest in the subject property from their father, Alvan P. Odegaard, on September 22, 1959, as reflected by a bargain and sale deed included with the claim. However, the deed by which Alvan Odegaard conveyed the property to the claimants was subject to a life estate, which reserved in Alvan Odegaard the exclusive right to use the property during his lifetime. The claimants did not acquire a present ownership interest and right to use the property until Alvan Odegaard's death. Alvan Odegaard passed away on May 19, 1974, as reflected by a certificate of death provided by the claimants. Alvan Odegaard acquired the property through several transactions between 1939 and 1959.

The Lake County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Audry Lynch, William, Gerald and Maurice Odegaard, Donna Spencer and Helen Yakely, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C), as of May 19, 1974. Alvan Odegaard is a family member of the claimants, as defined in ORS 197.352(11)(A), and acquired the property between 1939 and 1959.

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 divide the 475.57-acre subject property into thirty-five 6- to 40-acre parcels and to develop a dwelling on each parcel, and that state and county land use regulations prevent that desired use.²

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimants' property is zoned Exclusive Agriculture (A-2) with a Big Game Habitat overlay by Lake County.³ The property is zoned A-2 as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.⁴ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for 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

² The claimants summarily cite numerous land use regulations as applicable to this claim, but do 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 land use regulations either do not apply to the subject 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' desired use of the subject property, based on the claimants' description of that desired use.

³ Big Game Habitat Restrictions under the Significant Resource Combining Zone, Article 18, of the Lake County Zoning Ordinance.

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

215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

The property is also subject to Lake County's Big Game Habitat overlay zone, as required by Goal 5. Goal 5, also effective on January 25, 1975, establishes procedures and criteria for inventorying and evaluating Goal 5 resources and for developing land use programs to conserve and protect significant Goal 5 resources. Wildlife habitats, including the big game winter range habitat, are resources subject to the provisions of Goal 5 and the Goal 5 administrative rule (OAR 660-023-0110). In 1981, the Commission adopted OAR 660, division 16, establishing the process for applying Goal 5 to significant sites (OAR 660-016-0030). In 1996, the Commission adopted OAR 660, division 23, replacing OAR 660, division 16, which established a new process for inventorying, evaluating and designating significant wildlife habitat under Goal 5. The rule was amended in 2004.

The claimants' family first acquired the subject property between 1939 and 1959, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property during that period.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3 and 5, ORS 215 and OAR 660, divisions 23, and 33, were all enacted or adopted after the claimants' family acquired the subject property and restrict the use of the subject property relative to uses permitted when the claimants' family acquired 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 \$1,170,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on the claimants' analysis of sales of comparable properties in the area.

Conclusions

As explained in Section V.(1) of this report, the claimants are Audry Lynch, William, Gerald and Maurice Odegaard, Donna Spencer and Helen Yakely, whose family member acquired the subject property between 1939 and 1959. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants' family acquired interest in 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 \$1,170,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject 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 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, including applicable provisions of Goals 3 and 5, ORS 215 and OAR 660, divisions 23, and 33, which Lake County has implemented through its current A-2 zone and big game winter range standards. All of these land use regulations were enacted or adopted after the claimants' family acquired the subject property.

Conclusions

It appears that the general statutory, goal and rule restrictions on division and development of the claimants' property were not in effect when the claimants' family acquired the property between 1939 and 1959. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimants' family acquired interest in the subject property are also 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 subject property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the subject property permitted at the time the present owner acquired the property. The

Commission, by rule, has directed that if the department determines a claim is valid, the director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$1,170,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. 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 their family acquired interest in 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 Audry Lynch, William, Gerald and Maurice Odegaard, Donna Spencer and Helen Yakely to use the subject property for a use permitted at the time they acquired interest in the property on May 19, 1974.

The claimants acquired interest in the subject property on May 19, 1974, after the adoption of Senate Bill 100 (Chapter 80, Oregon Laws 1973) effective on October 5, 1973, but before the adoption of the statewide planning goals, effective on January 25, 1975. According to the Lake County Planning Department, it is not clear whether the property was zoned on May 19, 1974.⁵

During the period between October 5, 1973, and January 25, 1975, ORS 197.175(1) and 197.280 (1973 editions) required, in addition to any local plan or zoning provisions, that cities and counties exercise their planning responsibilities in accordance with the interim land use planning goals set forth in ORS 215.515 (1973 edition). *Petersen v. Klamath Falls*, 279 Or 249 (1977); *see also, Meeker v. Board of Comm'rs*, 287 Or 665 (1979) (review of a subdivision is an exercise of planning responsibilities requiring application of the goals); *State Housing Council v. Lake Oswego*, 48 Or App. 525 (1981) (noting that while "[l]and use planning responsibility is not defined in ORS ch 197, the Supreme Court has interpreted that term as including annexation approvals, *subdivision approvals* [emphasis added] and partition approvals") citing *Petersen*, *Meeker* and *Alexanderson v. Polk County*, 285 Or 427 (1980). The claimants' desired use includes subdivision of their land. If the claimants had sought to create that use in 1974, as a matter of law, the use would have been subject to the interim planning goals at ORS 215.515.⁶

⁵ According to the county planning department, if the property had been zoned in 1974, it would have been zoned A-2, which allowed for the creation of three-acre lots or parcels.

⁶ The "interim" land use goals are set forth in ORS 215.515(1)(a) to (j) (1973 edition) as follows: (a) "To preserve the quality of the air, water and land resources of the state," (b) "To conserve open space and protect natural and scenic resources," (c) "To provide for the recreational needs of citizens of the state and visitors," (d) "To conserve prime farm lands for the production of crops," (e) "To provide for the orderly and efficient transition from rural to

The following interim goals are directly applicable to this claim: "To preserve the quality of the air, water and *land* [emphasis added] resources of the state"; "To conserve prime farm lands for the production of crops"; "To provide for the orderly and efficient transition from rural to urban land use"; "To protect life and property in areas subject to floods, landslides and other natural disasters"; "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation"; and "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." ORS 215.515 (1973 edition).

No information has been provided establishing whether or to what extent the claimants' desired division of the subject property for residential development complies with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time the claimants acquired interest in the property on May 19, 1974.

In addition to the applicable provisions of ORS 215, including the interim goals, in effect when the claimants acquired the subject property on May 19, 1974, and other laws in effect when the claimants acquired the property, there may be other laws that 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, and depending on when they were enacted or adopted, may continue to apply to the claimants' property. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D) and will continue to apply to the subject property on that basis.

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 the claimants' division of the 475.57-acre subject property into thirty-five 6- to 40-acre

urban land use," (f) "To protect life and property in areas subject to floods, landslides and other natural disasters," (g) "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation," (h) "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development," (i) "To diversify and improve the economy of the state" and (j) "To ensure that the development of properties within the state is commensurate with the character and the physical limitations of the land." ORS 215.515 (1973 edition).

parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 5, ORS 215 and OAR 660, divisions 23, and 33, enacted or adopted after the claimants acquired the subject property. 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 interest in the property on May 19, 1974.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on May 19, 1974. On that date, the property was subject to the applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.519 (1973 edition).

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.

6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on April 12, 2007. 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.