Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2524
Phone: (503) 373-0050
First Floor/Coastal Fax: (503) 378-6033
Second Floor/Director's Office Fax: (503) 378-5518
Third Floor/Measure 37 Fax: (503) 378-5318
Web Address: http://www.oregon.gov/LCD

July 9, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130706

Claimants: Robert P. Seymour, Barbara P. Seymour, Clare P. Hayes

---

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. M130706
(BALLOT MEASURE 37) OF	)	
Robert P. Seymour, Barbara P. Seymour	)	
Clare P. Hayes, CLAIMANTS	)	

Claimants: Robert P. Seymour, Barbara P. Seymour and Clare P. Hayes (the Claimants)

Property: Township 7S, Range 39E, Section 31, Tax lot 100, Baker 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 denied for the southern approximately 76 acres of the subject property as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

The Claim is approved for the division of one 40-acre developed parcel from the northern 232.72-acre portion of the 308.72-acre subject property and to the development of a dwelling on the remainder of that portion as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to the claimants' division of one 40-acre developed parcel from the northern 232.72-acre portion of subject property and to their development of a dwelling on the remainder of that portion: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after June 17, 1992. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the northern 232.72 acres of the subject property for the use described in this report, and only to the extent that use was permitted when the claimants acquired that portion of the subject property on June 17, 1992.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the 232.72-acre portion of the subject property for the use described in this report, subject to the standards in effect on June 17, 1992. At that time, the property was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Baker County's acknowledged EFU zone, and the applicable provisions 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.

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 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 9th day of July, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Janice K. Dean, SSD Administrator
DAS, State Services Division
Dated this 9th day of July, 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

July 9, 2007

STATE CLAIM NUMBER:	M130706
NAMES OF CLAIMANTS:	Robert P. Seymour Barbara P. Seymour Clare P. Hayes
MAILING ADDRESSES:	Robert Seymour 15394 North Rock Creek Lane Haines, OR 97833 Barbara Seymour PO Box 313 Oceanside, OR 97134 Clare Hayes 20920 Canal View Drive Bend, OR 97701
PROPERTY IDENTIFICATION:	Township 7S, Range 39E, Section 31 Tax lot 100 Baker County
DATE RECEIVED BY DAS:	November 13, 2006
DEADLINE FOR FINAL ACTION:[1]	May 6, 2008

I. SUMMARY OF CLAIM

The claimants, Robert and Barbara Seymour and Clare Hayes, seek compensation in the amount of $200,000 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 one 40-acre developed parcel from the 308.72-acre subject property and to

[1] ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

develop a dwelling on the remaining 268.72-acre parcel.[2] The subject property is located approximately two miles west of Haines, in Baker 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 in part. 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 one 40-acre developed parcel from the northern 232.72-acre portion of the 308.72-acre subject property and to their development of a dwelling on the remainder of that portion: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660 division 33, enacted or adopted after June 17, 1992. 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 on the northern 232.72 acres of the property when they acquired it on June 17, 1992. (See the complete recommendation in Section VI. of this report.)

The department also recommends that the claim be denied as to the southern approximately 76 acres of the subject property because neither the Commission nor the department has enforced laws that restrict the claimants' use of the private real property relative to the uses permitted when the claimants acquired that portion of the property in 1997. Therefore, no laws enforced by the Commission or the department have the effect of reducing the fair market value of that portion of the property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On May 16, 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.

---

[2] Although the claimants identify only the northern 232.72 acres of tax lot 100 as the subject of this claim, tax lot 100 consists of 308.72 acres, as evidenced by a partition plat. The department has included the entire 308.72-acre tax lot 100 in its review for this claim because the claimants' desired use involves the southern approximately 76 acres of tax lot 100.

The claimants have also identified two alternative and mutually exclusive alternative uses, i.e. after dividing a 40-acre parcel, the claimants state that they desire either to "join" the remaining parts of the property or to partition into separate parcels with dwellings "when economically feasible." ORS 197.352 allows the department to waive certain land use regulations to allow the present owners to use the property for "a use" that was permitted at the time they acquired it. It does not authorize the department to waive regulations to allow multiple alternative (and, presumably mutually exclusive) uses, particularly where the claim does not establish how specific land use regulations that may preclude those uses have had the effect of reducing the property's fair market value. Accordingly, the department has evaluated this claim based on "joining" the remainder of the subject property into one parcel because that appears to be the claimants' present desired use, and it is the desired use described with enough specificity to allow the department to evaluate it.

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 13, 2006, for processing under OAR 125, division 145. The claim identifies all the statewide planning goals, specifically Goal 3; ORS 92, 197 and 215; OAR 660, division 33; and Baker County's Exclusive Farm Use (EFU) zoning 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, Robert and Barbara Seymour and Clare Hayes, acquired the northern 232.72-acre portion of the subject property from Robert and Helen Proebstel on June 17, 1992, and acquired the southern approximately 76 acres on February 12, 1997, as reflected by bargain and sale deeds included with the claim. Robert and Helen Proebstel, the claimants' parents and grandparents, acquired the northernmost 80 acres of the subject property on December 30, 1946, and acquired

the central approximately 152.72 acres on January 23, 1947,[3] as reflected by deeds included with the claim. The Baker County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Robert and Barbara Seymour and Clare Hayes, are "owners," as that term is defined by ORS 197.352(11)(C), as of June 17, 1992, for the northern 232.72 acres of the property and as of February 12, 1997, for the southern approximately 76 acres. Robert and Helen Proebstel are "family members," as defined by ORS 197.352(11)(A), as to the northern 232.72 acres of the property and acquired the northernmost 80 acres of the subject property on December 30, 1946, and the central approximately 152.72 acres on January 23, 1947.

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 one 40-acre developed parcel from the 308.72-acre subject property, and to develop a dwelling on the remaining 268.72-acre parcel, and that the desired use is not allowed under current land use regulations.[4]

The claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land. The claimants' property is zoned EFU by Baker County 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.[5] 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 the development of dwellings on existing or any proposed parcel on that land.

---

[3] Robert Proebstel appears to have had an ownership interest in the central approximately 152.72 acres of the subject property prior to January 23, 1947; however, the claimants have not provided documentation of Robert Proebstel's original acquisition. Accordingly, the department has determined Robert Proebstel's acquisition date based on the documents submitted with the claim.

[4] The claimants summarily list numerous state land use laws 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 the regulations either do not apply to the claimants' property or do not restrict the use of the claimants' 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 their desired use.

[5] The claimants' property is "agricultural land" because it contains National Resources Conservation Service Class I–VI soils.

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.[6]

The claimants' family first acquired the northern 232.72 acres of the subject property prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to this portion of the subject property in 1946 and 1947.

At the time the claimants acquired the southern approximately 76 acres in 1997, the property was subject to Baker County's acknowledged EFU zone[7] and the current provisions of ORS 215 and the provisions of OAR 660, division 33, then in effect, as described above.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimants' family acquired the northern 232.72-acre portion of the subject property in 1946 and 1947 and do not allow the claimants' desired use of the property. However, the current zoning requirements were all enacted or adopted before the claimants acquired the southern approximately 76 acres of the property on February 12, 1997. Laws enacted or adopted since the claimants acquired the southern approximately 76 acres do not restrict the claimants' desired use of that portion of the property relative to when the claimants acquired it in 1997.

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 $200,000 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' assessment of the subject property's value.

---

[6] The Commission adopted amendments to OAR 660-033-0130 et seq. to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. These amendments clarified but did not further restrict the OAR 660, division 33, development standards.

[7] Baker County's EFU zone was acknowledged by the Commission for compliance with Goal 3 on May 16, 1986.

Conclusions

As explained in Section V.(1) of this report, the claimants are Robert and Barbara Seymour and Clare Hayes whose family members acquired the northern 232.72 acres of the subject property on December 30, 1946, and who acquired the southern approximately 76 acres of the subject property on February 12, 1997. No state laws enacted or adopted since the claimants acquired the southern approximately 76 acres subject property restrict the use of the property relative to the uses allowed in 1997. Therefore, the fair market value of the southern approximately 76 acres has not been reduced as a result of land use regulations enforced by the Commission or the department.

Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the 232.72-acre portion 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 the northern 232.72 acres 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 $200,000.

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 northern 232.72 acres 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 that portion of 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 Goal 3, ORS 215 and OAR 660, division 33, which Baker County has implemented through its current EFU zone. These land use regulations were enacted or adopted after the claimants' family acquired the northern 232.72 acres of the subject property and before the claimants acquired the southern approximately 76 acres of the subject property on February 12, 1997.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on division and development of northern 232.72 acres of the subject property were in effect when the claimants' family acquired that portion the subject property on December 30, 1946, and January 23, 1947. As a result, these laws are not exempt under ORS 197.352(3)(E) for that portion of the property. Laws in effect when the claimants' family acquired that portion of the subject property are exempt under ORS 197.352(3)(E) and would 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.

All of the state land use regulations that restrict the claimants' desired use of the southern approximately 76 acres of the subject property were in effect when the claimants acquired that portion of the property in 1997 and therefore, are exempt under ORS 197.352(3)(E).

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 record and the foregoing findings and conclusions, the claimants have not established that they are entitled to relief under ORS 197.352(1) for the southern approximately 76 acres of the subject property as a result of land use regulations enforced by the Commission or the department because no state land use regulations restrict the claimants' desired use of that portion of the property relative to uses permitted when they acquired it, with the effect of reducing the property's fair market value. Therefore, the department recommends that this claim be denied as to the southern approximately 76 acres.

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 northern 232.72 acres 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 northern 232.72 acres of the subject property by $200,000. 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 232.72-acre portion of the subject property was allowed under the standards in effect when the claimants' family acquired that portion of 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 Robert and Barbara Seymour and Clare Hayes to use the northern 232.72 acres of the subject property for a use permitted at the time they acquired that portion of the subject property on June 17, 1992.

At the time the claimants acquired the northern 232.72 acres of the subject property, it was subject to Baker County's acknowledged EFU zone. At that time, the claimants' desired use of that portion of the property would have been subject to compliance with Goal 3 and OAR 660, division 5, as implemented through the county's acknowledged EFU zone, and the applicable provisions of ORS 215 then in effect.[8] In 1992, ORS 215.263 (1991 edition) required that divisions of land in EFU zones be "appropriate for the continuation of the existing commercial agricultural enterprise within the area" or not smaller than the minimum size in the county's acknowledged plan. ORS 215.283(1)(f) (1991 edition) generally allowed farm dwellings "customarily provided in conjunction with farm use." Non-farm dwellings were allowed under ORS 215.283(3) if they were determined to be compatible with farm use, not interfere seriously with accepted farm practices, not materially alter the stability of the land use pattern in the area and be situated on generally unsuitable land for the production of farm crops and livestock.

The claim does not establish whether or to what extent the claimants' desired division and development of the northern 232.72 acres of the subject property were allowed under the standards in effect when they acquired that portion of the property in 1992.

In addition to the applicable provisions of Goal 3, ORS 215, and OAR 660 in effect on June 17, 1992, and other laws in effect when the claimants acquired the northern 232.72-acre portion of the subject property, there may be other laws that apply to the claimants' use of that portion 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 that portion 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 use 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 denied as to the southern approximately 76 acres of the subject property because no state land use regulations restrict the

[8] After the county's comprehensive plan and land use regulations were acknowledged by the Commission as complying with the statewide planning goals, the goals and implementing rules no longer applied directly to individual 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).

claimants' desired use of that portion of the property relative to uses permitted when they acquired it in 1997, with the effect of reducing the property's fair market value.

The department further recommends that the claim be approved as to the northern 232.72 acres of the subject property, 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 one 40-acre developed parcel from the northern 232.72-acre portion of subject property and to their development of a dwelling on the remainder of that portion: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after June 17, 1992. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the northern 232.72 acres of the subject property for the use described in this report, and only to the extent that use was permitted when the claimants acquired that portion of the subject property on June 17, 1992.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the 232.72-acre portion of the subject property for the use described in this report, subject to the standards in effect on June 17, 1992. At that time, the property was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Baker County's acknowledged EFU zone, and the applicable provisions 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.

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 June 6, 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..