Oregon
Theodore R. Kulongoski, Governor

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November 1, 2007

To: Interested Persons

From: Cora R. Parker, Acting Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M131296

Claimants: James, Betty and Merry Lou Hollin

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. M131296
(BALLOT MEASURE 37) OF	)	
James, Betty and Merry Lou Hollin, CLAIMANTS	)	

Claimants: James, Betty and Merry Lou Hollin (the Claimants)

Property: Township 6S, Range 2W, Section 15D, Tax lots 500 and 600
Marion 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 Betty and Merry Lou Hollin for the western portion of tax lot 500 and to Merry Lou Hollin for tax lot 600 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 otherwise 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 James, Betty and Merry Lou Hollin's development of a dwelling on each subject parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant 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 James Hollin acquired tax lot 500 on June 21, 1990, when Betty and Merry Lou Hollin acquired the eastern portion of tax lot 500 on April 30, 1991, and when James and Betty Hollin acquired tax lot 600 on April 30, 1991.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the property for the use described in this report, subject to the standards in effect on June 21, 1990, as to James Hollin for tax lot 500 and April 30, 1991 as to Betty and Merry Lou Hollin for the eastern portion of tax lot 500 and as to James and Betty Hollin for tax lot 600. On those

dates, the property was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Marion 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 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 Acting 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 Manager for the Measure 37 Services Unit 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:

Cora R. Parker

Cora R. Parker, Acting Director
DLCD
Dated this 1st day of November, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Carla Ploederer

Carla Ploederer, Manager
DAS, Measure 37 Services Unit
Dated this 1st day of November, 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

November 1, 2007

STATE CLAIM NUMBER:	M131296
NAMES OF CLAIMANTS:	James, Betty and Merry Lou Hollin
MAILING ADDRESS:	7495 Sequoia Street NE Brooks, Oregon 97305
PROPERTY IDENTIFICATION:	Township 6S, Range 2W, Section 15D Tax lots 500 and 600 Marion County
OTHER CONTACT INFORMATION:	Mark D. Shipman PO Box 470 Salem, Oregon 97308
DATE RECEIVED BY DAS:	November 27, 2006
DEADLINE FOR FINAL ACTION:[1]	May 20, 2008

I. SUMMARY OF CLAIM

The claimants, James, Betty and Merry Lou Hollin, seek compensation in the amount of $250,000 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 develop a dwelling on each existing tax lot.[2] The subject property is located in the 7000 block of 67th Avenue NE, near Salem, in Marion 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

[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.

[2] The subject property is 45.87 acres and includes two tax lots. Tax lot 500 consists of 34.87 acres and tax lot 600 consists of 11 acres.

not apply to James, Betty and Merry Lou Hollin's development of a dwelling on each subject parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after each claimant 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 James Hollin acquired tax lot 500 on June 21, 1990, when Betty and Merry Lou Hollin acquired the eastern portion of tax lot 500 on April 30, 1991, and when James and Betty Hollin acquired tax lot 600 on April 30, 1991.

The department further recommends that the claim be denied as to Betty and Merry Lou Hollin for the western portion of tax lot 500 and as to Merry Lou Hollin for tax lot 600 because they have not established their ownership of those portions of the subject property. (See the complete recommendation in Section VI. of this report).

III. COMMENTS ON THE CLAIM

Comments Received

On July 12, 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 15-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 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 27, 2006, for processing under OAR 125, division 145. The claim identifies ORS 92, 197, 215, 227 and OAR 660 as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

Claimant James Hollin acquired tax lot 500 on June 21, 1990, as reflected by a recorded warranty deed obtained by the department. On April 30, 1991, claimants Betty and Merry Lou Hollin acquired an ownership interest in the eastern approximately 550 feet of tax lot 500, and James and Betty Hollin acquired tax lot 600, as reflected by recorded warranty deeds included with the claim.[3] Betty and Merry Lou Hollin have not established their ownership of the remaining western portion of tax lot 500, and Merry Lou Hollin has not established her ownership of tax lot 600. The Marion County Assessor's Office confirms the claimants' current ownership of tax lot 500 and James and Betty Hollin's ownership of tax lot 600.

Conclusions

Claimant James Hollin is an "owner" of tax lot 500 as of June 21, 1990, and claimants Betty and Merry Lou Hollin are "owners" of the eastern approximately 550 feet of tax lot 500 as of April 30, 1991, as that term is defined by ORS 197.352(11)(C). James and Betty Hollin are "owners" of tax lot 600, as that term is defined by ORS 197.352(11)(C), as of April 30, 1991. Claimants Betty and Merry Lou have not established their ownership of the western portion of tax lot 500, and claimant Merry Lou Hollin has not established her ownership of tax lot 600.

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.

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[3] Claimants Betty and Merry Lou Hollin assert that they acquired tax lot 500 on April 31, 1991; however, the claimants only submitted documentation of Betty and Mary Lou Hollin's acquisition of the eastern approximately 550 feet of tax lot 500 on that date. Merry Lou Hollin also asserts an ownership interest in tax lot 600 on that date. However, the claimants have not submitted any documentation to support that assertion. Absent documentation to support the claimants' asserted acquisition dates, the department must rely on the documentation in the file.

Findings of Fact

The claim indicates that the claimants desire to develop a dwelling on each existing tax lot, and that current land use regulations prevent the desired use.[4]

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 EFU by Marion 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 215.284 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, establish standards for development of dwellings on existing or proposed parcels on EFU-zoned land.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994.[6]

At the time the claimants acquired the subject property, it was subject to Marion County's acknowledged comprehensive plan and EFU zone.[7] That zone allowed dwellings in conjunction with farm subject to review standards. At that time, the claimants' desired use 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 1990 and 1991, ORS 215.283(1)(f) (1989 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.

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[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 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 their desired use.

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

[6] The Commission adopted amendments to OAR 660-033-0100, -0130 and -0135 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 dwelling standards under OAR 660, division 33, for EFU-zoned land.

[7] Marion County's EFU zone was acknowledged by the Commission for compliance with Goal 3 on June 10, 1982.

[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).

The claim does not establish whether or to what extent the claimants' desired development of the subject property was allowed under the standards in effect when James Hollin acquired tax lot 500 on June 21, 1990, when Betty and Merry Lou Hollin acquired the eastern portion of tax lot 500 on April 30, 1991, and when James and Betty Hollin acquired tax lot 600 on April 30, 1991.

Conclusions

The current zoning requirements and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimants acquired the subject property in 1990 and 1991 and do not allow the claimants' desired development of the property. However, the claim does not establish whether or to what extent the claimants' desired use of the subject property complies with the standards for development under Goal 3 and OAR 660, division 5, as implemented through Marion County's comprehensive plan and EFU zone and applicable provisions of ORS 215, in effect when James Hollin acquired tax lot 500 on June 21, 1990, when Betty and Merry Lou Hollin acquired the eastern portion of tax lot 500 on April 30, 1991, and when James and Betty Hollin acquired tax lot 600 on April 30, 1991.

As explained in Section V.(1) above, claimants Betty and Merry Lou Hollin have not established that they are "owners" of the western portion of tax lot 500 and Merry Lou Hollin has not established that she is an "owner" of tax lot 600, as that term is defined in ORS 197.352(11)(C). Without such demonstration, it is not possible to determine that any laws enforced by the Commission or the department restrict their desired use of those portions of the subject property with the effect of reducing the fair market value of the property relative to how the property could have been used at the time they or their family member may have acquired the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. There may be other laws that currently apply to the claimants' use of the subject property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

Findings of Fact

The claim includes an estimate of $250,000 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 a market analysis included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are James, Betty and Merry Lou Hollin. Claimant James Hollin acquired tax lot 500 on June 21, 1990, claimants Betty and Merry Lou Hollin acquired the eastern portion of tax lot 500 on April 30, 1991, and James and Betty Hollin acquired tax lot 600 on April 30, 1991. Claimants Betty and Merry Lou Hollin have not established that they are "owners" of the western portion of tax lot 500, and Merry Lou Hollin has not established that she is an "owner" of tax lot 600, as that term is defined in ORS 197.352(11)(C). Without such demonstration, the department can make no determination on the effect of any land use regulations on the fair market value of the subject property as to them.

Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants acquired the subject property restrict the claimants' desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of $250,000.

Without an appraisal or other documentation and without verification of whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when they acquired the property, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

4. Exemptions Under ORS 197.352(3)

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

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Marion County has implemented through its current EFU zone. With the exception of amendments enacted or adopted after June 21, 1990, and April 30, 1991, Goal 3, ORS 215 and OAR 660 were in effect when the claimants acquired the subject property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that the general statutory, goal and rule restrictions on development of the subject property are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after James Hollin acquired tax lot 500 on June 21, 1990, Betty and Merry Lou Hollin acquired the eastern portion of tax lot 500 on April 30, 1991, and James and Betty Hollin

acquired tax lot 600 on April 30, 1991. Provisions of Goal 3, ORS 215 and OAR 660 in effect when the claimants acquired the subject property in 1990 and 1991 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

As explained in Section V.(1) of this report, the claimants, Betty and Merry Lou Hollin have not established that they are "owners" of the western portion of tax lot 500, and Merry Lou Hollin has not established that she is an "owner" of tax lot 600, as that term is defined in ORS 197.352(11)(C).. Without such demonstration, the department can make no determination as to whether any land use laws are exempt from ORS 197.352 as to them.

Other laws in effect when the claimants acquired the subject property are also exempt under ORS 197.352(3)(E) and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to the claimants' use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of 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. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property, based on the uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the record, the department finds that the claim is not valid as to Betty and Merry Lou Hollin as to the western portion of tax lot 500, and Merry Lou Hollin as to tax lot 600, because they have not demonstrated their ownership of those portions of the subject property or established the date they acquired the property. The department further finds that laws enforced by the Commission or the department restrict James Hollin's desired use of tax lot 500, Betty and Merry Lou Hollin's desired use of the eastern portion of tax lot 500 and James and Betty Hollin's desired use of tax lot 600. 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 $250,000. 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 the compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when they each 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 the claimants to use the subject property for a use permitted on June 21, 1990, as to James Hollin for tax lot 500, and April 30, 1991, as to Betty and Merry Lou Hollin for the eastern portion of tax lot 500 and as to James and Betty Hollin for tax lot 600.

Conclusions

Based on the record before the department, Betty and Merry Lou Hollin, have not established that they are entitled to relief as to the western portion of tax lot 500, and Merry Lou Hollin has not established that she is entitled to relief as to tax lot 600, under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because they have not established that they are the owners of those portions of the subject property. Therefore, the department recommends that this claim be denied as Betty and Merry Lou Hollin for those portions of the property.

The department otherwise 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 James, Betty and Merry Lou Hollin's development of a dwelling on each subject parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant 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 James Hollin acquired tax lot 500 on June 21, 1990, when Betty and Merry Lou Hollin acquired the eastern portion of tax lot 500 on April 30, 1991, and when James and Betty Hollin acquired tax lot 600 on April 30, 1991.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the property for the use described in this report, subject to the standards in effect on June 21, 1990, as to James Hollin for tax lot 500 and April 30, 1991 as to Betty and Merry Lou Hollin for the eastern portion of tax lot 500 and as to James and Betty Hollin for tax lot 600. On those dates, the property was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Marion 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 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 September 27, 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. Comments received have been taken into account by the department in the issuance of this final report.