



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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October 31, 2007

To: Interested Persons
From: Cora R. Parker, Acting Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M131342

Claimants: Jolenta Hinsvark, James A. and Sharon M. Callan-Hinsvark

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. M131342
(BALLOT MEASURE 37) OF)	
Jolenta Hinsvark and)	
James A. and Sharon M. Callan-Hinsvark, CLAIMANTS)	

Claimants: Jolenta Hinsvark and James A. and Sharon M. Callan-Hinsvark (the Claimants)

Property: Township 5S, Range 1W, Section 28, Tax lot 1900, 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 Jolenta Hinsvark and for James and Sharon Callan-Hinsvark s to the 2 acres subject to Jolenta Hinsvark's life estate 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 remaining 33-acre property for James and Sharon Callan-Hinsvark 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 and Sharon Callan-Hinsvark's division of 33 acres of the 35-acre subject property into five 5-acre parcels and one 10-acre parcel or to their development of a dwelling on each resulting undeveloped parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each of them acquired the subject property. These land use regulations will not apply to those 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 and Sharon Callan-Hinsvark acquired the 33-acre portion of the subject property on August 3, 2004. The department acknowledges that the relief to which those claimants are entitled under ORS 197.352 will not allow them to use the subject property in the manner set forth in the claim.

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 when James and Sharon Callan-Hinsvark acquired the 33-acre portion of the subject property on August 3, 2004. On August 3, 2004, the property was subject to the applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently in effect.

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

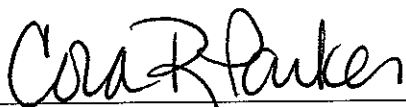
4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

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, Acting Director
DLCD

Dated this 31st day of October, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Carla Ploederer, Manager
DAS, Measure 37 Services Unit

Dated this 31st day of October, 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**

October 31, 2007

STATE CLAIM NUMBER: M131342

NAMES OF CLAIMANTS: Jolenta Hinsvark
James A. and Sharon M. Callan-Hinsvark

MAILING ADDRESS: 11875 Monitor-McKee Road
Woodburn, Oregon 97071

PROPERTY IDENTIFICATION: Township 5S, Range 1W, Section 28
Tax lot 1900
Marion County

OTHER CONTACT INFORMATION: Jerry Hinsvark
5794 Crooked Finger Road
Scotts Mills, Oregon 97375

DATE RECEIVED BY DAS: November 28, 2006

DEADLINE FOR FINAL ACTION:¹ May 21, 2008

I. SUMMARY OF CLAIM

The claimants, Jolenta Hinsvark and James and Sharon Callan-Hinsvark, seek compensation in the amount of \$625,000 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 35-acre subject property into five 5-acre parcels and one 10-acre parcel and to develop a dwelling on each resulting undeveloped parcel. The subject property is located at 11875 Monitor-McKee Road, near Woodburn, 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

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.

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 James and Sharon Callan-Hinsvark's division of 33 acres of the 35-acre subject property into five 5-acre parcels and one 10-acre parcel and to their development of a dwelling on each resulting undeveloped 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 of them acquired the property. These laws will not apply to those 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 and Sharon Callan-Hinsvark acquired the 33-acre portion of the 35-acre subject property on August 3, 2004. The department acknowledges that the relief to which those claimants are entitled under ORS 197.352 will not allow them to use the subject property in the manner set forth in the claim.

The department further recommends that the claim for Jolenta Hinsvark be denied because she is not an owner of 33 acres of the 35-acre subject property not reserved to her in her life estate and because her life estate ownership interest in the remaining 2 acres, on which the existing home is located, would not allow the claimants' desired division and development of the subject property into 5-acre parcels. The department further recommends that the claim for James and Sharon Callan-Hinsvark be denied as to the 2 acres subject to Jolenta Hinsvark's life estate, on which the existing home is located, because they do not have a present right to use that portion of the property in a manner that can be restricted by land use regulations. (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, two written comments were received in response to the 15-day notice.

The comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letters in the department's claim file).

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or

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

Findings of Fact

This claim was submitted to DAS on November 28, 2006, for processing under OAR 125, division 145. The claim identifies Marion 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

Claimant Jolenta Hinsvark acquired the subject property on January 1, 1963, as reflected by a recorded real estate contract and fulfillment warranty deed included with the claim. Jolenta Hinsvark, and her late-husband, Arthur Hinsvark, subsequently transferred the property to the Arthur N. and Jolenta A. Hinsvark Revocable Living Trust, with themselves as trustees.² Jolenta Hinsvark, as sole remaining trustee of the Trust, conveyed the property to her son and daughter-in-law, James and Sharon Callan-Hinsvark, on August 3, 2004, reserving in herself a life estate in the existing home and 2 acres surrounding the home, as evidenced by a recorded warranty deed included with the claim. James and Sharon Callan-Hinsvark's remainder interest does not allow them to use the 2 acres subject to the life estate during the term of Jolenta Hinsvark's life. The Marion County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

Claimants James and Sharon Callan-Hinsvark are "owners" of 33 acres of the 35-acre subject property as that term is defined in ORS 197.352(11)(C), as of August 3, 2004. James and Sharon Callan-Hinsvark are owners of a future right of enjoyment in the 2 acres presently subject to Jolenta Hinsvark's life estate, but they are not affected "owners" who qualify for relief under

² Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

ORS 197.352 for that portion of the property because they do not own a property interest that currently allows them to use that portion of the property in a manner that can be restricted by land use regulations. Jolenta Hinsvark is a current owner of the 2 acres for which she holds a life estate interest, Jolenta Hinsvark is a “family member” of James and Sharon Callan-Hinsvark as that term is defined by ORS 197.352(11)(A) as to the remaining 33 acres of the property. Jolenta Hinsvark is not an owner of the 33 acres not subject to her life estate.

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 35-acre subject property into five 5-acre parcels and one 10-acre parcel and to develop a dwelling on each resulting undeveloped parcel, and that the property’s current zoning prevents the desired use.

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 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 3.³ 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.

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, 1994.⁴

³ The claimants’ property is “agricultural land” because it contains Natural Resources Conservation Service Class I–IV soils.

⁴ The Commission subsequently 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 for EFU-zoned land.

Jolenta Hinsvark acquired the subject property in 1963, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1963. However, Jolenta Hinsvark no longer owns 33 acres of the 35-acre subject property. The 2 acres subject to Jolenta Hinsvark's life estate interest would not permit the claimants' desired division of that portion of the property into 5-acre parcels for additional development. James and Sharon Callan-Hinsvark do not have a right to use the 2 acres subject to Jolenta Hinsvark's life estate interest in a manner that can be restricted by land use regulations.

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 enacted or adopted after Jolenta Hinsvark acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when Jolenta Hinsvark acquired the property. However, Jolenta Hinsvark is no longer an owner of 33 acres of the 35-acre subject property, and her present life estate interest in the remaining 2 acres, on which the existing home is located, would not allow her to divide that portion of the property into the claimants' desired 5-acre parcels for residential development.

Claimants James and Sharon Callan-Hinsvark are not affected "owners" who qualify for relief under ORS 197.352 for the 2 acres subject to Jolenta Hinsvark's life estate because they do not own a property interest that currently allows them to use that portion of the property in a manner that can be restricted by land use regulations.

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 \$625,000 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 realtor's assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Jolenta Hinsvark who acquired the subject property in 1963 and her son and daughter-in-law, James and Sharon Callan-Hinsvark. Jolenta Hinsvark is no longer an owner of 33 acres of the 35-acre subject property, and her ownership interest in the remaining 2 acres does not permit the claimants' desired use of that portion of the property. Therefore she is not entitled to relief under ORS 197.352. James and Sharon Callan-Hinsvark do not own a present interest in the 2 acres subject to Jolenta Hinsvark's life estate that would allow them to use that portion of the property in a manner that can be restricted by land use regulations and, therefore, are not entitled to relief as to that portion of the property. Under ORS 197.352, James and Sharon Callan-Hinsvark are otherwise due compensation for land use regulations that restrict the use of the remaining 33 acres of the 35-acre 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 Jolenta Hinsvark acquired the subject property restrict James and Sharon Callan-Hinsvark's 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 \$625,000.

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 33-acre portion of the 35-acre 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 Jolenta Hinsvark 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 Goal 3, ORS 215 and OAR 660, division 33, which Marion County has implemented through its current EFU zone. These land use regulations were enacted or adopted after Jolenta Hinsvark acquired the subject property.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on division and development of the claimants' property were in effect when Jolenta Hinsvark acquired the subject property in 1963. As a result, these laws are not exempt under ORS 197.352 to the extent the claimants have a current ownership interest in the property that can be restricted by land use regulations. Laws in effect when Jolenta Hinsvark acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, 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.

As explained in Section V.(1) of this report, Jolenta Hinsvark is not an owner of 33 acres of the 35-acre subject property as that term is defined in ORS 197.352(11)(C). In addition, her ownership interest in the remaining 2 acres of the subject property would not allow the claimants' desired division of that portion of the property into 5-acre parcels. Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to her claim.

As also explained in Section V.(1) of this report, James and Sharon Callan-Hinsvark are not affected "owners" who qualify for relief under ORS 197.352 for the 2 acres subject to Jolenta Hinsvark's life estate because they do not own a property interest that currently allows them to use that portion of the property in a manner that can be restricted by land use regulations. Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to that portion of their claim.

VI. FORM OF RELIEF

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

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department do not restrict Jolenta Hinsvark's desired use of the subject property because she is not an owner of 33 acres of the 35-acre subject property, and because her life estate interest in the remaining 2 acres of the property would not allow the claimants' desired division of that portion of the property into 5-acre parcels. The department further finds that laws enforced by the Commission or the department do not restrict James and Sharon Callan-Hinsvark's desired use of the 2 acres subject to Jolenta Hinsvark's life estate because they do not have a present right to use that portion of the property in a manner that can be restricted by land use regulations. The department otherwise finds that laws enforced by the Commission or the department do restrict James and Sharon Callan-Hinsvark's desired use of the remaining 33 acres of the 35-acre 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 \$625,000. 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 33-acre portion 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 James and Sharon Callan-Hinsvark's desired use of the 33-acre portion of the subject property was allowed under the standards in effect when Jolenta Hinsvark 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 James and Sharon Callan-Hinsvark to use the 33-acre portion of the subject property for a use permitted at the time they acquired that portion on August 3, 2004.

At the time James and Sharon Callan-Hinsvark acquired an interest in the 33-acre portion of subject property, it was zoned EFU and subject to Goal 3, and applicable provisions of ORS 215 and OAR 660, division 33, currently in effect.

In addition to the applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, in effect when James and Sharon Callan-Hinsvark acquired the 33-acre portion of the property on August 3, 2004, there may be other laws that apply to those claimants' use of the property that have not been identified in the claim. This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the 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 for Jolenta Hinsvark be denied because she is not an owner of 33 acres of the 35-acre subject property not reserved to her in her life estate and because her life estate ownership interest in the remaining 2 acres, on which the existing home is located, would not allow the claimants' desired division and development of that portion of the property into 5-acre parcels. The department further recommends that the claim for James and Sharon Callan-Hinsvark be denied as to the 2 acres subject to Jolenta Hinsvark's life estate, on which the existing home is located, because they do not have a present right to use that portion of the property in a manner that can be restricted by land use regulations.

The department otherwise recommends that the claim be approved as to James and Sharon Callan-Hinsvark, 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 and Sharon Callan-Hinsvark's division of 33 acres of the 35-acre subject property into five 5-acre parcels and one 10-acre parcel or to their development of a dwelling on each resulting undeveloped parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each of them acquired the subject property. These land use regulations will not apply to those 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 and Sharon Callan-Hinsvark acquired the 33-acre portion of the subject property on August 3, 2004. The department acknowledges that the relief to which those claimants are entitled under ORS 197.352 will not allow them to use the subject property in the manner set forth in the claim.

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 when James and Sharon Callan-Hinsvark acquired the 33-acre portion of the subject property on August 3, 2004. On August 3, 2004, the property was subject to the applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently in effect.

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

4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

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 24, 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.