



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>

August 6, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M134297

Claimants: Stig and Leann Johanson

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

This Amended Final Staff Report and Recommendation and the Amended 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)	AMENDED FINAL ORDER
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M134297
(BALLOT MEASURE 37) OF)	
Stig and Leann Johanson, CLAIMANTS)	

Claimants: Stig and Leann Johanson (the Claimants)

Property: Township 2S, Range 7E, Section 23D, Tax Lot 1901; and
Township 2S, Range 7E, Section 26, Tax Lot 900
Clackamas 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 Amended Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Stig and Leann Johanson's division of the 2.92-acre subject property into five parcels for their residential development or to their development of a publicly-owned water supply system: the applicable provisions of Goal 14 and OAR 660-004-0040 and OAR 660, division 11, 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 Stig Johanson acquired the property on April 8, 1977, and when Leann Johanson acquired the property on January 22, 1996. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 may not allow Stig Johanson and will not allow Leann Johanson to use the subject property in the manner set forth in the claim.

Amendments to Goal 11 and its implementing rules at OAR 660, division 11, adopted after Stig and Leann Johanson acquired the property, will not apply only to the extent that they prohibit these claimants from establishing an urban level of public facilities and services to serve the development of the property. Goal 11 will continue to apply to public service providers seeking to extend or establish public facilities to serve the subject property.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on April 8, 1977, for Stig Johanson and on January 22, 1996, for Leann Johanson. On April 8, 1977, the property was subject to the applicable provisions of the statewide planning goals, and in particular, Goals 11 and 14 in effect at that time. On January 22, 1996, the property was subject to applicable provisions of Goals 11 and 14, as implemented by Clackamas County's acknowledged comprehensive plan, 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 6th day of August, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Janice K. Dean, SSD Administrator
DAS, State Services Division

Dated this 6th day of August, 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
Amended Final Staff Report and Recommendation

August 6, 2007

STATE CLAIM NUMBER: M134297

NAMES OF CLAIMANTS: Stig and Leann Johanson

MAILING ADDRESS: 20497 East Lolo Pass Road
Rhododendron, Oregon 97049

PROPERTY IDENTIFICATION: Township 2S , Range 7E
Section 23D: tax lot 1901
Township 2S, Range 7E
Section 26: tax lot 900
Clackamas County

OTHER CONTACT INFORMATION: DJ Bleu
43900 SE Music Camp Road
Sandy, Oregon 97055

DATE RECEIVED BY DAS: November 2, 2006

180-DAY DEADLINE: May 1, 2007¹

I. SUMMARY OF CLAIM

The claimants, Stig and Leann Johanson, seek compensation in the amount of \$1,096,179 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 2.92-acre subject property into five parcels for residential development and to develop a publicly-owned water supply system. The subject property is located at 20497 East Lolo Pass Road, near Rhododendron, in Clackamas County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following

¹ In response to the final report and order dated April 26, 2007, the claimant submitted a letter dated May 4, 2007, seeking to reduce the scope of the desired use and correcting the reference to the local zoning in effect when he acquired the property. The claimant previously sought a waiver under ORS 197.352 for division of the subject property into 11 parcels.

state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Stig and Leann Johnson's division of the 2.92-acre subject property into five parcels for their residential development and to their development of a publicly-owned water supply system: applicable provisions of Statewide Planning Goals 11 (Public Facilities and Services) and 14 (Urbanization) and Oregon Administrative Rule (OAR) 660-004-0040 and OAR 660, division 11, 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 Stig Johanson acquired the property on April 8, 1977, and when Leann Johanson acquired the property on January 22, 1996. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 may not allow Stig Johanson and will not allow Leann Johanson to use the subject property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

OAR 125-145-0100 provides an opportunity for the claimants or the claimants' authorized agent and any third parties to submit written comments, evidence and information in response to the draft staff report and recommendation. Such response must be filed no more than 10 calendar days after the date this report is mailed to the claimants and any third parties. Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report.

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 2, 2006, for processing under OAR 125, division 145. The claim identifies Clackamas County's rural residential 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 Stig Johanson acquired the subject property on April 8, 1977, as reflected by a warranty deed included with the claim. Claimant Leann Johanson acquired the subject property from her husband, Stig Johanson, on July 22, 1996, as reflected by a bargain and sale deed included with the claim. The Clackamas County Assessor’s Office confirms the claimants’ current ownership of the subject property.

Conclusions

The claimants, Stig and Leann Johanson, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of April 8, 1977, for Stig Johanson and as of July 22, 1996, for Leann Johanson. Stig Johanson is a “family member” of Leann Johanson as that term is defined by ORS 197.352(11)(A).

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 2.92-acre subject property into five parcels for residential development and to develop a publicly-owned water supply system, and that the property’s current zoning prevents the desired use.

The claim is based on the provisions of state law that regulate rural residential zoning. The claimants’ property is zoned Rural Residential Farm/Forest 5-Acre (RRFF-5) by Clackamas County. The RRFF-5 zone is a rural residential zone, in accordance with Goal 14, which prohibits urban use of rural lands. The county’s RRFF-5 zone requires five acres for the creation of any new lot or parcel and was in effect and applied to the subject property on or before October 4, 2000.

Goal 14 became effective on January 25, 1975, and requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and efficient transition from rural to urban land use. In 2000, as a result of a 1986 Oregon Supreme Court decision,² the Commission amended Goal 14 and adopted OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas), which was effective on October 4, 2000.

The rule states that if a county rural residential zone in effect on October 4, 2000, specifies a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size then in effect (OAR 660-004-0040(7)(c)).³ Because Clackamas County's rural residential zone was in effect on October 4, 2000, and requires a minimum lot size of five acres, the minimum lot size for all new lots or parcels must equal or exceed five acres.

Goal 11, which also became effective on January 25, 1975, generally prohibits urban levels of public facilities and services on lands that are outside an urban growth boundary. Goal 11 and its implementing rules have two components: one that prohibits an owner from utilizing urban-level facilities or services to serve the property, and another that prohibits service providers from extending their facilities to serve property outside an urban growth boundary. The former can restrict a claimant's use of property. The latter is a restriction on service providers. Goal 11 and OAR 660, division 11, apply to the claimants' use of the property only to the extent that they would restrict the claimants' development of urban-level public or community sewer or water facilities on the subject property.

Stig Johanson acquired the subject property after the adoption of the statewide planning goals, but before the Commission acknowledged Clackamas County's land use regulations to be in compliance with statewide planning goals pursuant to ORS 197.250 and 197.251. The subject property was recognized as resource land when Stig Johanson acquired it in 1977, and because the Commission had not acknowledged Clackamas County's plan and land use regulations when he acquired the property, the statewide planning goals, and particularly Goals 3 (Agricultural Lands) and 4 (Forest Lands), in addition to Goals 11 and 14, would have applied directly to the claimants' property had they sought the desired use at the time Stig Johanson acquired the property.⁴ Alternatively, the claimants would have been required to establish a basis for an exception to compliance with those goals pursuant to the Goal 2 (Land Use Planning) exceptions process. However, through the county's acknowledgement process, the subject property was

² *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

³ Some relief from this provision is available for lots or parcels having more than one permanent habitable dwelling pursuant to OAR 660-004-0040(7)(h). The rule also provides that a county's minimum lot size requirement in a rural residential zone shall not be amended to allow a smaller minimum lot size without approval of an exception to Goal 14 (OAR 660-004-0040(6)).

⁴ The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of each county's land use regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 569 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer directly applied to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Foster v. Polk County*, 115 Or App 475 (1992); *Kenagy v. Benton County*, 115 Or App 131 (1992).

ultimately acknowledged as exceptions land pursuant to Goal 2, and zoned by the county for recreation residential use. Therefore, while the county could now require that the property be evaluated as resource land, as would have been required in 1977, because of the property's ultimate designation as rural residential exceptions land, the county could also require that the claimants' desired use be subject to compliance directly with Goals 11 and 14.

The claim does not establish whether the claimants' desired division of the subject property to create five parcels could have satisfied this standard.⁵

Conclusions

The minimum lot size requirements for rural residential lots or parcels established by Goals 11 and 14 and OAR 660-004-0040 and 660, division 11 were adopted after Stig Johanson acquired the subject property in 1977 and do not allow the desired division of the property. However, when Stig Johanson acquired the subject property in 1977, the statewide planning goals, and in particular, the general requirements of Goals 11 and 14, applied directly to the property. The claim does not establish whether or to what extent the claimants' desired level of development would have been permitted under the laws in effect in 1977 when Stig Johanson acquired the subject property.

Those elements of Goal 11 and 660, division 11 that prohibit a public service provider from extending or establishing public facilities or services outside of an urban growth boundary restrict the actions of local government rather than the claimants' use of the property. That component of Goal 11 is not subject to ORS 197.352 and will continue to apply to those service providers. Only the general prohibition under Goal 11 and 660, division 11 on the claimants' establishment of an urban level of public facilities and services is subject to ORS 197.352 and restricts the claimants' desired use of 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 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.

⁵ When Clackamas County's plan was acknowledged for compliance with Goal 14 on December 31, 1981, the subject property was zoned Recreational Residential (RR), which allowed one dwelling unit per acre with onsite sewage disposal and private water supply systems; two dwelling units per acre with onsite sewage disposal and state-approved publicly-owned and operated water supply systems; and four dwelling units per acre with a state-approved publicly-owned and operated water and sewage system..

3. Effect of Regulations on Fair Market Value

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

Findings of Fact

The claim includes an estimate of \$1,096,179 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.

Conclusions

As explained in Section V.(1) of this report, the claimants are Stig Johanson who acquired the subject property on April 8, 1977, and his wife, Leann Johanson. 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 adopted since Stig Johanson 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 \$1,096,179.

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 Stig Johanson 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 Goals 11 and 14 and OAR 660-004-0040 and 660, division 11, which Clackamas County has implemented through its RFF-5 zone. With the exception of provisions of Goals 11 and 14, adopted before Stig Johanson acquired the subject property on April 8, 1977, these state land use regulations were not in effect when he acquired the property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It

appears that the goal and rule restrictions on residential division of the claimants' property are not exempt under ORS 197.352(3)(E) to the extent they were adopted after Stig Johanson acquired the property. Provisions of Goals 11 and 14 in effect when Stig Johanson acquired the subject property in 1977 are exempt under ORS 197.352(3)(E) and will continue to apply to the property. 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.

VI. FORM OF RELIEF

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

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$1,096,179. 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 property was allowed under the standards in effect when Stig Johanson 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 Stig Johanson to use the subject property for a use permitted at the time he acquired the property on April 8, 1977, and to allow Leann Johanson to use the property for a use permitted at the time she acquired the property on July 22, 1996.

Leann Johanson acquired the property on July 22, 1996. At that time, the property was subject to Clackamas County's acknowledged comprehensive plan and RRFF-5 zone. The RRFF-5 zone required five acres for the creation of a new lot or parcel. Leann Johanson's desired residential development of the subject property at that time would have been subject to the provisions of the county's comprehensive plan and RRFF-5 zone, including the provision of Goal 14 implemented by those regulations.

In addition to the applicable provisions of Goals 11 and 14 in effect when Leann Johanson acquired the property on July 22, 1996, and other laws in effect when either of the claimants acquired the subject property, there may be other laws that apply to the claimants' use of the

property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use, and depending on when they were enacted or adopted, may continue to apply to the claimants' property. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D) and will continue to apply to the subject property on that basis.

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

Conclusions

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Stig and Leann Johanson's division of the 2.92-acre subject property into five parcels for their residential development or to their development of a publicly-owned water supply system: the applicable provisions of Goal 14 and OAR 660-004-0040 and OAR 660, division 11, 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 Stig Johanson acquired the property on April 8, 1977, and when Leann Johanson acquired the property on January 22, 1996. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 may not allow Stig Johanson and will not allow Leann Johanson to use the subject property in the manner set forth in the claim.

Amendments to Goal 11 and its implementing rules at OAR 660, division 11, adopted after Stig and Leann Johanson acquired the property, will not apply only to the extent that they prohibit these claimants from establishing an urban level of public facilities and services to serve the development of the property. Goal 11 will continue to apply to public service providers seeking to extend or establish public facilities to serve the subject property.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on April 8, 1977, for Stig Johanson and on January 22, 1996, for Leann Johanson. On April 8, 1977, the property was subject to the applicable provisions of the statewide planning goals, and in particular, Goals 11 and 14 in effect at that time. On January 22, 1996, the property was subject to applicable provisions of Goals 11 and 14, as implemented by Clackamas County's acknowledged comprehensive plan, 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 PROPOSED AMENDED FINAL STAFF REPORT

The department issued its proposed amended final staff report on this claim on July 3, 2007. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's 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 proposed amended final staff report and recommendation. Comments received have been taken into account by the department in the issuance of this amended final report.