

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. M118489
(BALLOT MEASURE 37) OF)
Steven and Susan Rask, CLAIMANTS)

Claimants: Steven and Susan Rask (the Claimants)

Property: Tax lot 300, Township 10S, Range 13E, Section 20, Jefferson 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 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 the Rasks' division of the 153-acre property into approximately four parcels or to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after October 25, 1973, for the 150 acres acquired on that date, and after October 12, 1981, for the three acres acquired on that date. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the 150-acre portion of the property on October 25, 1973, and when they acquired the three-acre portion of the property on October 12, 1981.
2. The action by the State of Oregon provides the state's authorization to the claimants to use 153 acres of their property for the use described in this report, subject to the standards in effect when they acquired 150 acres of the property on October 25, 1973, and three acres of the property on October 12, 1981. On October 25, 1973, the property was subject to applicable

provisions of ORS 215 then in effect. In 1981, the property was subject to the applicable provisions of Goal 3 and ORS 215 then in effect.

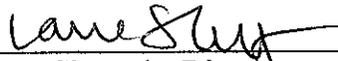
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants 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.

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 Deputy 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.

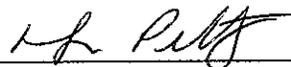
FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD

Dated this 31st day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 31st day of March, 2006.

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 197.352¹, 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.”

¹ By order of the Marion County Circuit Court, “all time lines under Measure 37 [were] suspended indefinitely” on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

**BALLOT MEASURE 37 (ORS 197.352)
CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation**

March 31, 2006

STATE CLAIM NUMBER: M118489

NAMES OF CLAIMANTS: Steven and Susan Rask

MAILING ADDRESS: 3020 Northwest Dogwood Lane
Madras, Oregon 97741

PROPERTY IDENTIFICATION: Township 10S, Range 13E, Section 20
Tax lot 300
Jefferson County

DATE RECEIVED BY DAS: May 23, 2005

180-DAY DEADLINE: April 7, 2006¹

I. SUMMARY OF CLAIM

The claimants, Steven and Susan Rask, seek compensation in the amount of \$455,767 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 their 160-acre property into four 40-acre parcels and to develop a dwelling on each parcel. The subject property is located at 3020 NW Dogwood Lane, near the City of Madras, in Jefferson 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, except as to seven acres of the subject property that the claimants acquired on April 29, 2005. For those seven acres, the claim is not valid because the claimants' desired use of the subject property was prohibited under the laws in effect when they acquired that portion of the property. For the remaining 153 acres, department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Rasks' division of those 153 acres into four, approximately 40-acre parcels, or to their development of a dwelling on each parcel: applicable provisions of

¹ This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Ballot Measure 37 was suspended during the pendency of the appeal of *MacPherson v. Dep't of Admin. Servs.*, 340 Or ___, 2006 Ore. LEXIS 104 (February 21, 2006).

Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after the claimants acquired 150 acres of the subject property in 1973 and three acres of the property in 1981. 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 at the time they acquired 150 acres of the property on October 25, 1973, and three acres of the property on October 12, 1981. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 21, 2005, 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, one written comment was received in response to the 10-day notice.

The comment does not address whether the claim meets the criteria for relief (compensation or waiver) under ORS 197.352 (Ballot Measure 37). 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 letter 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 Ballot 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 Ballot 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 May 23, 2005, for processing under OAR 125, division 145. The claim identifies ORS 215 and OAR 660, division 33, 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 December 2, 2004, the effective date of Ballot Measure 37, based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

The claimants, Steven and Susan Rask, acquired the bulk of the subject property on October 25, 1973, as reflected by a contract of sale included with the claim. The original acquisition was 190 acres. In 1980, the claimants partitioned tax lot 301, which included 40 acres, from the original parcel and sold those 40 acres, leaving them with 150 acres. On October 12, 1981, the claimants added three acres through a property line adjustment, as documented by a bargain and sale deed. On April 29, 2005, the claimants acquired an additional seven acres through a property line adjustment, as documented by a bargain and sale deed included with the claim. As a result, the subject property, tax lot 300, now consists of 160 acres.² The Jefferson County Assessor’s Account, dated May 20, 2005, reflects that Steven and Susan Rask are the current owners of the entire 160-acre property.

Conclusions

The claimants, Steven and Susan Rask, are “owners” of the subject property, as that term is defined by ORS 197.352(11)(C), as of October 23, 1973, for 150 acres, October 12, 1981, for three acres and April 29, 2005, for seven acres.

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 their 160-acre property into four 40-acre parcels and to develop each parcel with a dwelling, and that the current state land use regulations preclude that desired development.

² Jefferson County staff report for Claim No. 05-M37-22, page 1.

The claim is based generally on Jefferson County's current Exclusive Farm Use (EFU) A-1 zone and the applicable provisions of state law that require such zoning. The claimants' property is zoned EFU 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 the Goal 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 proposed parcels on that land.

ORS 215.780 established 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. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

The claimants acquired 150 acres of the subject property on October 25, 1973, after the adoption of Senate Bill (SB) 100 (Chapter 80, Oregon Laws 1973, effective on October 5, 1973) but before the adoption of the statewide planning goals, effective on January 25, 1975. At that time, it was zoned A-1, Agricultural District, by Jefferson County. The A-1 zone was a qualified farm use zone under ORS 215 and required a one-acre minimum lot size; single-family dwellings were permitted on new and existing parcels.

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

³ The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

create that use on October 25, 1973, as a matter of law, the use would have been subject to the interim planning goals at ORS 215.515.⁴

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

One of the interim goals was to "conserve prime farm lands for the production of crops." Soil types are a determinant of prime farm land. One hundred percent (160 acres) of the soils on the 160-acre property are rated as "prime" by the Natural Resource Conservation Service. According to the Oregon Department of Agriculture, Oregon has only a limited supply of soils rated "prime" (8.0 percent of all agricultural land).⁵

No information has been provided establishing whether or to what extent the claimants' desired division of the 150 acres of the subject property that they acquired on October 25, 1973, complies with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time the claimants acquired that portion of the property.

The claimants acquired an additional three acres of the subject property in 1981, after the adoption of the statewide planning goals, but before Jefferson County's comprehensive plan and land use regulations were acknowledged to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged the county's plan and land use regulations when the claimants acquired the three-acre portion of the subject property on October 12, 1981, the statewide planning goals, and Goal 3 in particular, applied directly to that portion of the claimants' property when they acquired that portion of the property.⁶

⁴ The "interim" land use goals are set forth in ORS 215.515(1)(a) to (j) (1973 edition) as follows: (a) "To preserve the quality of the air, water and land resources of the state," (b) "To conserve open space and protect natural and scenic resources," (c) "To provide for the recreational needs of citizens of the state and visitors," (d) "To conserve prime farm lands for the production of crops," (e) "To provide for the orderly and efficient transition from rural to urban land use," (f) "To protect life and property in areas subject to floods, landslides and other natural disasters," (g) "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation," (h) "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development," (i) "To diversify and improve the economy of the state" and (j) "To ensure that the development of properties within the state is commensurate with the character and the physical limitations of the land." ORS 215.515 (1973 edition).

⁵ The entire property consists of 87A-Madras loam, 0-3 percent slopes. This soil is prime when irrigated. Staff contacted Susan Rask by telephone on February 24, 2006. Ms. Rask confirmed the entire 160 acres are irrigated. The soil, 87A-Madras loam, 0-3 percent slopes, is a subclass III soil.

⁶ 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

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the claimants' opportunity to divide that portion of the subject property when they acquired it in 1981 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.

Under the Goal 3 standards in effect on October 12, 1981, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition).

No information has been presented in the claim to establish that the claimants' desired division of the portion of the subject property they acquired in 1981 complies with the "commercial" standard for farm parcels under Goal 3 or the standards for non-farm parcels under ORS 215.263 (1973 edition), nor is there any information to establish that the claimants' desired development of that portion of the property satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1973 edition).

Finally, the claimants acquired an additional seven acres, which are also now part of tax lot 300, on April 29, 2005. That portion of the property is subject to compliance with current provisions of Goal 3, ORS 215 (2005 edition) and OAR 660, division 33, described above.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, do not allow the desired division or development of the property. However, the claim does not establish whether or to what extent the claimants' desired use of the 150-acre portion of the subject property they acquired on October 25, 1973, complies with the interim planning goals in effect when they acquired that portion of the property, or whether or to what extent the claimants' desired use of the three-acre portion of the property they acquired on October 12, 1981, complies with the statewide planning goals in effect when they acquired that portion of the property.

comprehensive plan and implementing 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 3 (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 applied directly 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. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

The claimants acquired an additional seven acres of tax lot 300 on April 29, 2005, after the effective dates of the current provisions of Goal 3, ORS 215 (2005 edition) and OAR 660, division 33. These laws do not restrict the use of the seven acres relative to the uses allowed when the claimants acquired this portion of the subject property on April 29, 2005.

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 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 any land use regulation 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 \$455,767 as the reduction in the subject property's fair market value due to current regulations. This amount is based on a realtor's estimate of the market value of 40-acre parcels with a home in the area, minus cost.

Conclusions

As explained in Section V.(1) of this report, the claimants are Steve and Susan Rask who acquired the subject property on October 25, 1973, October 12, 1981, and April 29, 2005. Under ORS 197.352, the Rasks are due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Because no land use regulations restrict use of the seven-acre portion of the subject property relative to uses permitted when the claimants acquired it on April 29, 2005, the claimants are not due compensation for that seven-acre portion of the property. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants acquired the remaining 153-acres of the subject property in 1973 and 1981 restrict the desired division of that portion of the property. The claimants estimate the reduction in value due to the restrictions to be \$455,767.

Without an appraisal or other documentation establishing the reduction in value for land use regulations that restrict the 153-acre portion of the subject property for which compensation is due, and without verification of whether or the extent to which the claimants' desired use of that 153-acre portion of the property was allowed under the standards in effect when they acquired those portions of the property, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that the fair market value of the 153-acre

portion 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 Jefferson County has implemented through its current A-1 zone. With the exception of applicable provisions of ORS 215, these laws were enacted or adopted after the claimants initially acquired 150 acres of the subject property on October 25, 1973. Some or all of these laws were in effect when the claimants acquired the remaining portions of the subject property in 1981 and 2005.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all of 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. With the exception of applicable provisions of ORS 215, including the interim goals at ORS 215.515, it appears that none of the general statutory, goal and rule restrictions on division and development of the claimants' property were in effect when the claimants initially acquired the 150-acre portion of the subject property on October 25, 1973, and therefore, these laws are not exempt under ORS 197.352(3)(E) for that portion of the property. With regard to the three-acre portion of the subject property the claimants acquired on October 12, 1981, these laws are not exempt under ORS 197.352(3)(E) to the extent they were enacted or adopted after the claimants acquired that portion of the property. The laws currently in effect were enacted or adopted before the claimants acquired the remaining seven acres of the subject property on May 20, 2005, and therefore, are all exempt as to that portion of the property.

Provisions of ORS 215 in effect when the claimants acquired the 150-acre portion of the subject property in 1973, provisions of Goal 3 and ORS 215 in effect in 1981 when the claimants acquired the three-acre portion of the property and the current provisions of Goal 3, ORS 215 and OAR 660, division 33, in effect when the claimants acquired the remaining seven acres of the property in 2005, are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimants acquired the subject property are 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 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 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.

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 a law that restricts 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 current 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' ability to divide the 160-acre property into four 40-acre parcels and to develop a dwelling on each parcel. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$455,767. However, a specific amount of compensation cannot be determined because (1) the claim does not provide an appraisal or other specific documentation establishing how the specified restrictions reduce the fair market value of the subject property, (2) laws enforced by the Commission or department do not reduce the fair market value of the seven-acre portion of the property the claimants acquired in 2005 and (3) there is no verification of whether or the extent to which the claimants' desired use of the remaining 153-acre property was allowed under the standards in effect when they acquired the property. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely 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 Steven and Susan Rask to use the subject property for a use permitted at the time they acquired the 150-acre portion of the subject property on October 25, 1973, and the three-acre portion of the property on October 12, 1981. The claimants are not entitled to relief for the seven acres they acquired in April 2005 because neither the department nor the Commission enforced laws after April 29, 2005, that restrict the claimants' use of the subject property.

Conclusions

Based on the record, the department recommends that the claim be denied as to the seven acres the claimants acquired on April 29, 2005, and that the claim be approved as to the remaining 153 acres, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to the Rasks' division of the 153-acre property into approximately four parcels or to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after October 25, 1973, for the 150 acres acquired on that date, and after October 12, 1981, for the three acres acquired on that date. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the 150-acre portion of the property on October 25, 1973, and when they acquired the three-acre portion of the property on October 12, 1981.
2. The action by the State of Oregon provides the state's authorization to the claimants to use 153 acres of their property for the use described in this report, subject to the standards in effect when they acquired 150 acres of the property on October 25, 1973, and three acres of the property on October 12, 1981. On October 25, 1973, the property was subject to applicable provisions of ORS 215 then in effect. In 1981, the property was subject to the applicable provisions of Goal 3 and 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.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 13, 2006. 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 draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.