

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. M125234  
(BALLOT MEASURE 37) OF )  
John and Carol Harrell, CLAIMANTS )

Claimants: John and Carol Harrell (the Claimants)

Property: Township 40S, Range 13W, Section 25, Tax lot 1900

Township 40S, Range 13W, Section 25B, Tax lot 1601  
Curry 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 as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the 3.75-acre portion of tax lot 1900 that the claimants acquired on February 25, 1998 for reasons set forth in the DLCD Report.

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 John and Carol Harrell's division of the 133.72-acre portion of tax lot 1900 and division of tax lot 1601 into three approximately 40-acre or larger parcels, one 3.75-acre parcel and one 2.53-acre parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after the claimants acquired these tax lots. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the 133.72-acre portion of tax lot 1900 and to use tax lot 1601 for the use described in this report, and only to the extent that use was permitted when they acquired the 133.72-acre portion of tax lot 1900 on March 14, 1989, and when they acquired tax lot 1601 on March 20, 1992.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the 133.72-acre portion of tax lot 1900 and to use tax lot 1601 for the use described in this report, subject to the standards in effect on March 14, 1989, and March 20, 1992. On those dates, the 133.72-acre portion of tax lot 1900 and tax lot 1601 were subject to applicable provisions of Goal 3 or 4 and OAR 660, divisions 5, and 6, as implemented by Curry County's acknowledged FG zone, and the applicable provisions of 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 133.72-acre portion of tax lot 1900 and tax lot 1601 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 133.72-acre portion of tax lot 1900 and tax lot 1601 imposed by private parties.

4. Any use of the 133.72-acre portion of tax lot 1900 and tax lot 1601 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).

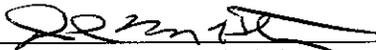
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the 133.72-acre portion of tax lot 1900 and tax lot 1601, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that 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 133.72-acre portion of tax 1900 and tax lot 1601 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 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 25<sup>th</sup> day of October, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 25<sup>th</sup> day of October, 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 197.352, 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 25, 2006

**STATE CLAIM NUMBER:** M125234

**NAMES OF CLAIMANTS:** John and Carol Harrell

**MAILING ADDRESS:** 99847 South Bank Chetco River Rd.  
Brookings, Oregon 97415

**PROPERTY IDENTIFICATION:** Township 40S, Range 13W  
Section 25: tax lot 1900  
Section 25B: tax lot 1601  
Curry County

**OTHER CONTACT INFORMATION:** Andrew Bean  
130 First Ave. W.  
Albany, Oregon 97321

**DATE RECEIVED BY DAS:** May 5, 2006

**180-DAY DEADLINE:** November 1, 2006

**I. SUMMARY OF CLAIM**

The claimants, John and Carol Harrell, seek compensation in the amount of \$2.1 million 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 subject property consists of tax lots 1601 and 1900. The claimants desire compensation or the right to divide the 137.31-acre subject property into three approximately 40-acre or larger parcels, one 3.75-acre parcel and one 2.53-acre parcel.<sup>1</sup> The subject property is located at 99847 South Bank Chetco River Road, near Brookings, in Curry County. (See claim.)

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid in part. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to John and Carol Harrell's division of the 133.72-acre portion of tax lot 1900 and

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<sup>1</sup> The subject property includes two tax lots. Tax lot 1601 consists of 0.26 acre, and tax lot 1900 consists of 137.05 acres.

division of tax lot 1601 into three approximately 40-acre or larger parcels, one 3.75-acre parcel and one 2.53-acre parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6, and 33, enacted or adopted after the claimants acquired these tax lots. These laws will not apply to the claimants only to the extent necessary to allow them to use the 133.72-acre portion of tax lot 1900 and to use tax lot 1601 for the use described in this report, and only to the extent that use was permitted when they acquired the 133.72-acre portion of tax lot 1900 on March 14, 1989, and when they acquired tax lot 1601 on March 20, 1992.

The department has determined that the claim is not valid for the 3.75-acre portion of tax lot 1900 that the claimants acquired on February 25, 1998, because the claimants' desired use of the property was prohibited under the laws in effect when the claimants acquired that portion of tax lot 1900. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On August 22, 2006, 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 10-day notice.

The comments are relevant to when the claimants became the present owners of the subject property and whether a state law restricts the claimants' use of the subject property. The comments have been considered by the department in preparing this report. (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 May 5, 2006, for processing under OAR 125, division 145. The claim identifies "all amendments to statewide planning goals and land use, as well as land division statutes" enacted or adopted after the claimants acquired each tax lot as the basis for the

claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

### **Conclusions**

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

## **V. ANALYSIS OF CLAIM**

### **1. Ownership**

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

### **Findings of Fact**

The claimants, John and Carol Harrell, acquired a 133.72-acre portion of tax lot 1900 on March 14, 1989, and acquired tax lot 1601 on March 20, 1992, as reflected by deeds included with the claim. On February 25, 1998, the claimants acquired the remaining 3.75-acre portion of tax lot 1900 by lot line adjustment, as reflected by a deed included with the claim. The Curry County Assessor’s Office confirms that claimants’ current ownership of the subject property.

### **Conclusions**

The claimants, John and Carol Harrell, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of March 14, 1989, for 133.72 acres of tax lot 1900; as of March 20, 1992, for tax lot 1601; and as of February 25, 1998, for the remaining 3.75-acre portion of tax lot 1900.

### **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 137.31-acre subject property into three approximately 40-acre or larger parcels, one 3.75-acre parcel and one 2.53-acre parcel. It indicates that the use is not allowed under current land use regulations.<sup>2</sup>

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<sup>2</sup> The claimants summarily cited numerous state land use laws as applicable to this claim, but did not establish how the laws either apply to the claimants’ desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimants’ property

The claim is based generally on the applicable provisions of state law that require mixed farm-forest zoning and restrict uses on land zoned mixed farm-forest. The claimants' property is zoned by Curry County as Forest Grazing (FG), which is a mixed agricultural and forest land zone, as required by Goals 3 and 4 and the implementing provisions of OAR 660, division 6 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.<sup>3</sup> Depending on the predominant use on January 1, 1993, the property is subject to either the requirements for dwellings applicable under Exclusive Farm Use (EFU) zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Curry County's FG zone is 160 acres. The claimants' property cannot be divided into parcels smaller than 160 acres.

At the time the claimants acquired the 133.72-acre portion of tax 1900 on March 14, 1989, and at the time they acquired tax lot 1601 in 1992, the property was subject to the Curry County's acknowledged forest grazing zone.<sup>4</sup> When the claimants acquired those portions of the property, the desired division and development of the property would have been governed by the applicable provisions of Goals 3 and 4 and OAR 660, divisions 5, and 6, as implemented through the county's acknowledged forest grazing zone.<sup>5</sup> In 1989 and 1992, ORS 215.263 (1987 and 1991 editions) required that divisions of land in EFU zones be "appropriate for the continuation of the existing commercial agricultural enterprise within the area" or not smaller than the minimum size in the county's acknowledged plan. ORS 215.283(1)(f) (1987 and 1991 editions) generally allowed farm dwellings "customarily provided in conjunction with farm use." Non-farm dwellings were allowed under ORS 215.283(3) if they were determined to be compatible with farm use, not interfere seriously with accepted farm practices, not materially alter the

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or do not restrict the use of the claimants' property in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' use of the subject property, based on the claimants' asserted desired use.

<sup>3</sup> No information was provided to the department regarding the predominant use of the subject property on January 1, 1993.

<sup>4</sup> Curry County's forest grazing zone was acknowledged by the Commission for compliance with Goals 3 and 4 on February 17, 1984.

<sup>5</sup> After the county's comprehensive plan and land use regulations were acknowledged by the Commission as complying with the statewide planning goals, the goals and implementing rules no longer applied directly to individual local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, insofar as the state and local provisions implement the requirements of the goals and rules, 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).

stability of the land use pattern in the area and be situated on generally unsuitable land for the production of farm crops and livestock.

The claim does not establish whether or to what extent the claimants' desired division and development of the 133.72-acre portion of tax lot 1900 and all of tax lot 1601 were allowed under the standards in effect when they acquired these portions of the subject property in 1989 and 1992.

At the time the claimants acquired the 3.75-acre portion of tax lot 1900 in 1998, the property was zoned FG by Curry County and subject to the current lot size and dwelling standards under Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, as described above.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established under Goal 4 for lands zoned for mixed farm-forest use and the statutory and rule restrictions under applicable provisions of ORS 215 and OAR 660, divisions 6, and 33, were enacted or adopted after the claimants acquired the 133.72-acre portion of tax lot 1900 in 1989 and after they acquired tax lot 1601 in 1992, and do not allow the claimants' desired division and development of the property. However, the claim does not establish whether or the extent to which the claimants' desired use of the property was allowed under the standards in effect when they acquired those portions of the property. Laws enacted or adopted since the claimants acquired the 3.75-acre portion of tax lot 1900 in 1998 do not restrict the claimants' desired use of that portion of tax lot 1900 relative to uses allowed when the claimants acquired it in 1998.

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. 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 \$2.1 million 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 property's value.

## **Conclusions**

As explained in Section V.(1) of this report, the claimants are John and Carol Harrell who acquired the 133.72-acre portion of tax lot 1900 on March 14, 1989; tax lot 1601 on March 20, 1992; and the 3.75-acre portion of tax lot 1900 on February 25, 1998. No state laws enacted or adopted since the claimants acquired the 3.75-acre portion of tax lot 1900 restrict the use of the property relative to the uses allowed in 1998, and therefore, the claimants are not entitled to compensation as to that portion of tax lot 1900. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the 133.72-acre portion of tax lot 1900 and restrict use of tax lot 1601 and have the effect of reducing their fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants acquired the 133.72-acre portion of tax lot 1900 and since they acquired tax lot 1601 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 \$2.1 million.

Without an appraisal or other documentation and without verification of whether or the extent to which the claimants' use of the 133.72-acre portion of tax lot 1900 and use of tax lot 1601 was allowed under the standards in effect when they acquired the property, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the 133.72-acre portion of tax lot 1900 and tax lot 1601 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 Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Curry County has implemented through its current FG zone. With the exception of provisions of Goals 3 and 4 and ORS 215 in effect in 1989 and 1992, these laws were not in effect when the claimants acquired the 133.72-acre portion of tax lot 1900 and when they acquired tax lot 1601. The state land use regulations restricting the claimants' desired use of the 3.75-acre portion of tax lot 1900 were in effect when the claimants acquired that portion of the property in 1998.

## **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 statutory, goal and rule restrictions on residential division and development of the 133.72-acre portion of tax lot 1900 and tax lot 1601 are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after the claimants acquired them

on March 14, 1989, and March 20, 1992, respectively. Provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 5, and 6, in effect when the claimants acquired the 133.72-acre portion of tax lot 1900 in 1989 and when they acquired tax lot 1601 in 1992, are exempt under ORS 197.352(3)(E) and will continue to apply to these portions. All of the state land use regulations that restrict the claimants' desired use of the 3.75-acre portion of tax lot 1900 acquired in 1998 were in effect when the claimants acquired that portion of the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimants acquired the property.

Other laws in effect when the claimants acquired the 133.72-acre portion of tax lot 1900 and tax lot 1601 are also exempt under ORS 197.352(3)(E) and will continue to apply to the claimants' use of the property. In addition, the department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. These provisions include fire protection standards for dwellings and for surrounding forest lands. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . ." To the extent they are applicable to the claimants' property, the siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

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 the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

## **VI. FORM OF RELIEF**

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

### **Findings of Fact**

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' desired use of the 133.72-acre portion of tax lot 1900 and their desired use of tax lot 1601. 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 \$2.1 million. 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 they 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 John and Carol Harrell to use the 133.72-acre portion of tax lot 1900 and to use tax lot 1601 for a use permitted at the time they acquired these portions of the property in 1989 and 1992.

### **Conclusions**

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department do not restrict the claimants' desired use of the 3.75-acre portion of tax lot 1900 relative to what was permitted when the claimants acquired it in 1998 and do not reduce the fair market value of the property. All state laws restricting the use of that portion of the subject property are exempt under ORS 197.352(3)(E). Therefore, the department recommends that the claim be denied as to the 3.75-acre portion of tax lot 1900.

The department further recommends that the claim be approved for the 133.72-acre portion of tax lot 1900 and tax lot 1601, 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 John and Carol Harrell's division of the 133.72-acre portion of tax lot 1900 and division of tax lot 1601 into three approximately 40-acre or larger parcels, one 3.75-acre parcel and one 2.53-acre parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after the claimants acquired these tax lots. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the 133.72-acre portion of tax lot 1900 and to use tax lot 1601 for the use described in this report, and only to the extent that use was permitted when they acquired the 133.72-acre portion of tax lot 1900 on March 14, 1989, and when they acquired tax lot 1601 on March 20, 1992.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the 133.72-acre portion of tax lot 1900 and to use tax lot 1601 for the use described in this report, subject to the standards in effect on March 14, 1989, and March 20, 1992. On those dates, the 133.72-acre portion of tax lot 1900 and tax lot 1601 were subject to applicable provisions of Goal 3 or 4 and OAR 660, divisions 5, and 6, as implemented by Curry County's acknowledged FG zone, and the applicable provisions of 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 133.72-acre portion of tax lot 1900 and tax lot 1601 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 133.72-acre portion of tax lot 1900 and tax lot 1601 imposed by private parties.

4. Any use of the 133.72-acre portion of tax lot 1900 and tax lot 1601 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 133.72-acre portion of tax lot 1900 and tax lot 1601, 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 133.72-acre portion of tax lot 1900 and tax lot 1601 by the claimants.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on October 11, 2006. 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.