

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. M118549
(BALLOT MEASURE 37) OF)
Estate of Klare Wollander)
Adam Wollander, Personal Representative, CLAIMANT)

Claimant: Estate of Klare Wollander, Adam Wollander, Personal Representative
(the Claimants)

Property: Township 9S, Range 3W, Section 15A, Tax lot 100, Marion County
(the property)

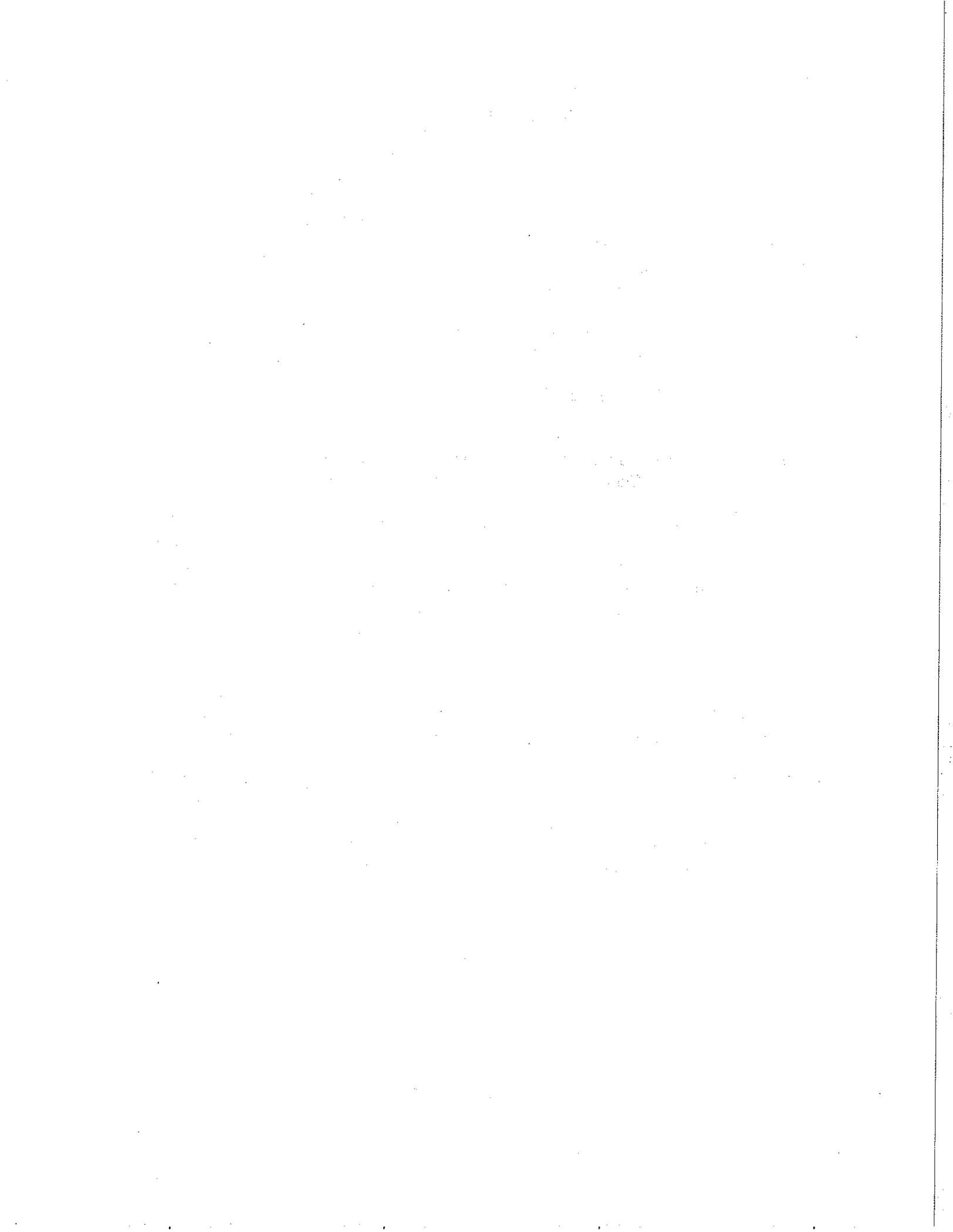
Claim: The demand for compensation and any supporting information received
from the Claimant by the State of Oregon (the Claim).

Claimant 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 reasons set forth in the DLCD Report.

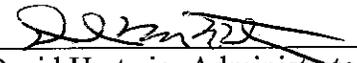
This Order is entered by the Manager for the Measure 37 Services Division of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.



FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:
Lane Shetterly, Director


Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 31st day of January, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:

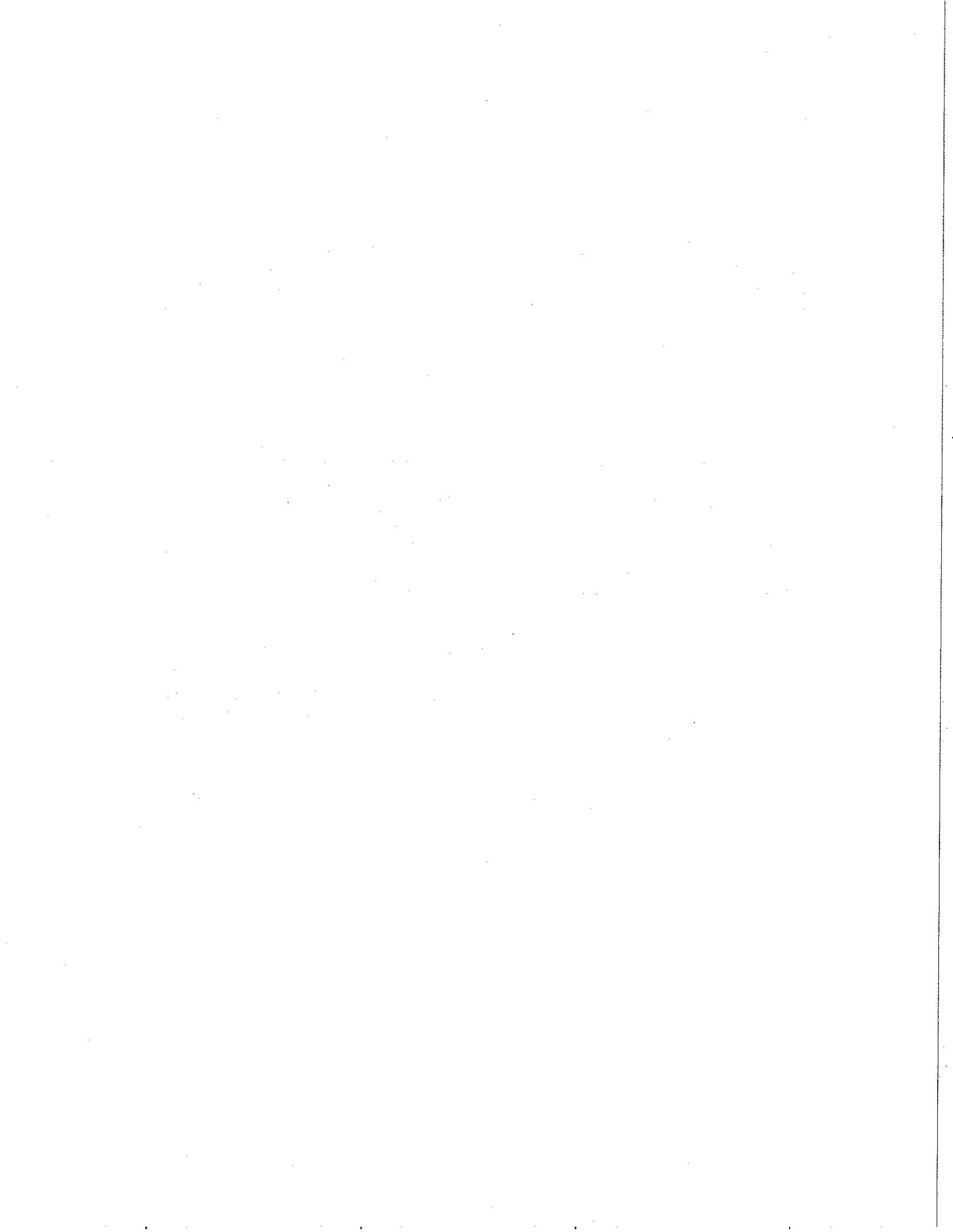

David Hartwig, Administrator
DAS, State Services Division
Dated this 31st day of January, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to the following judicial remedies:

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)



Department of Land Conservation and Development
635 Capitol St NE, Suite 150
Salem, OR 97301

CERTIFICATE OF MAILING

I certify that I served M118549 Wollander Amended Final Report and Amended Final Order on:

See Attached List

by following indicated method or methods:

by **mailing** a full, true and correct copy in a sealed, first-class postage-prepaid envelope, addressed to the person(s) listed above, and deposited with the United States Postal Service at Salem, Oregon on the date set forth below.

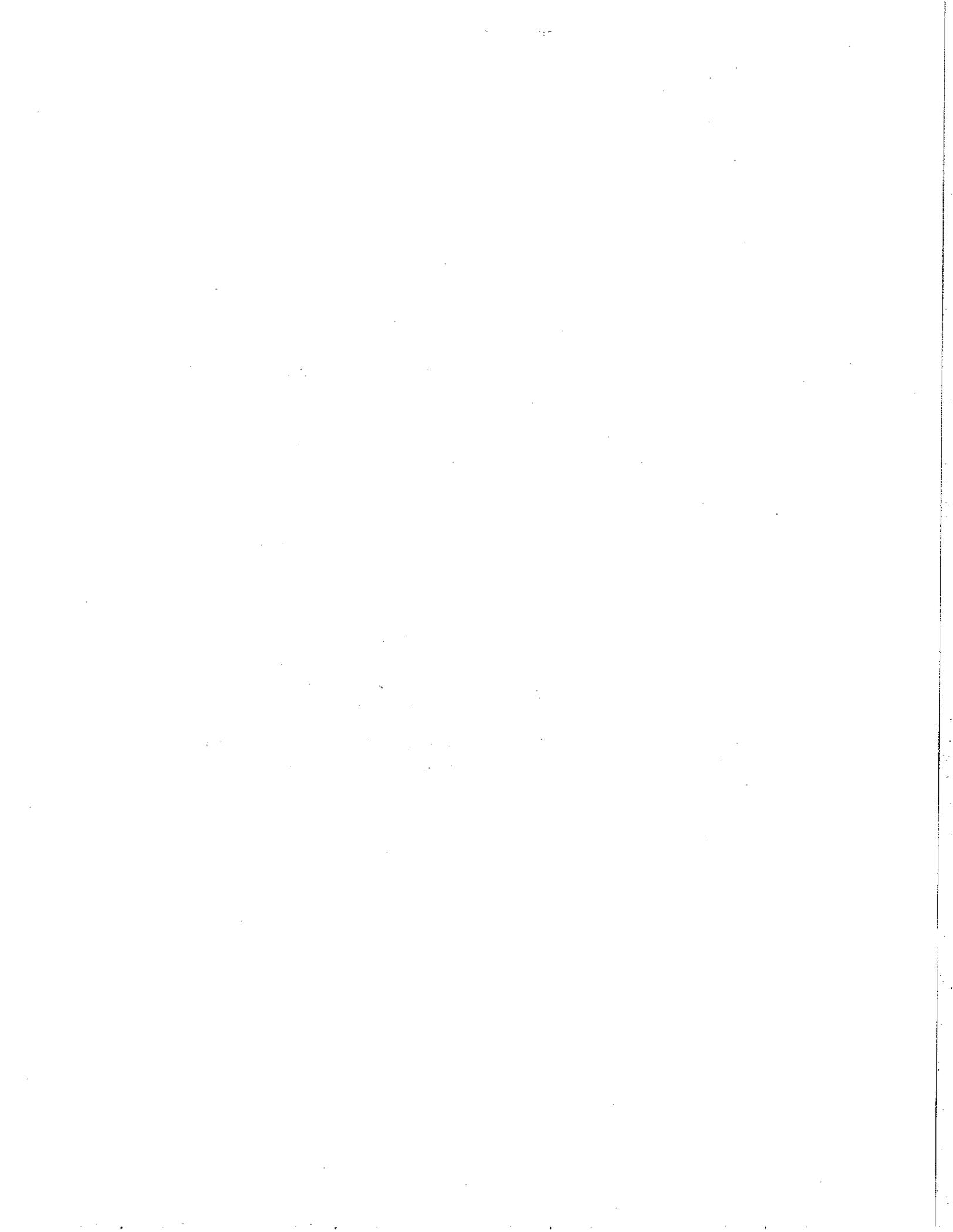
by **hand delivering** a full, true and correct copy to the person(s) listed above, on the date set forth below.

by **faxing** a full, true and correct copy to the person(s) at the fax number(s) shown above, on the date set forth below.

DATED this _____ day of _____, 20__.

Name: _____

Title: _____



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

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

January 31, 2007

STATE CLAIM NUMBER: M118549

NAME OF CLAIMANT: Estate of Klare Wollander
Adam Wollander,¹ Personal Representative

MAILING ADDRESS: 18620 Indian Creek Drive
Lake Oswego, Oregon 97035

PROPERTY IDENTIFICATION: Township 9S, Range 3W, Section 15A
Tax lot 100
Marion County

OTHER CONTACT INFORMATION: Wallace W. Lien, P.C.
1775 32nd Place NE, Suite A
Salem, Oregon 97303-1674

DATE RECEIVED BY DAS: June 1, 2005

180-DAY DEADLINE: April 16, 2006²

I. SUMMARY OF CLAIM

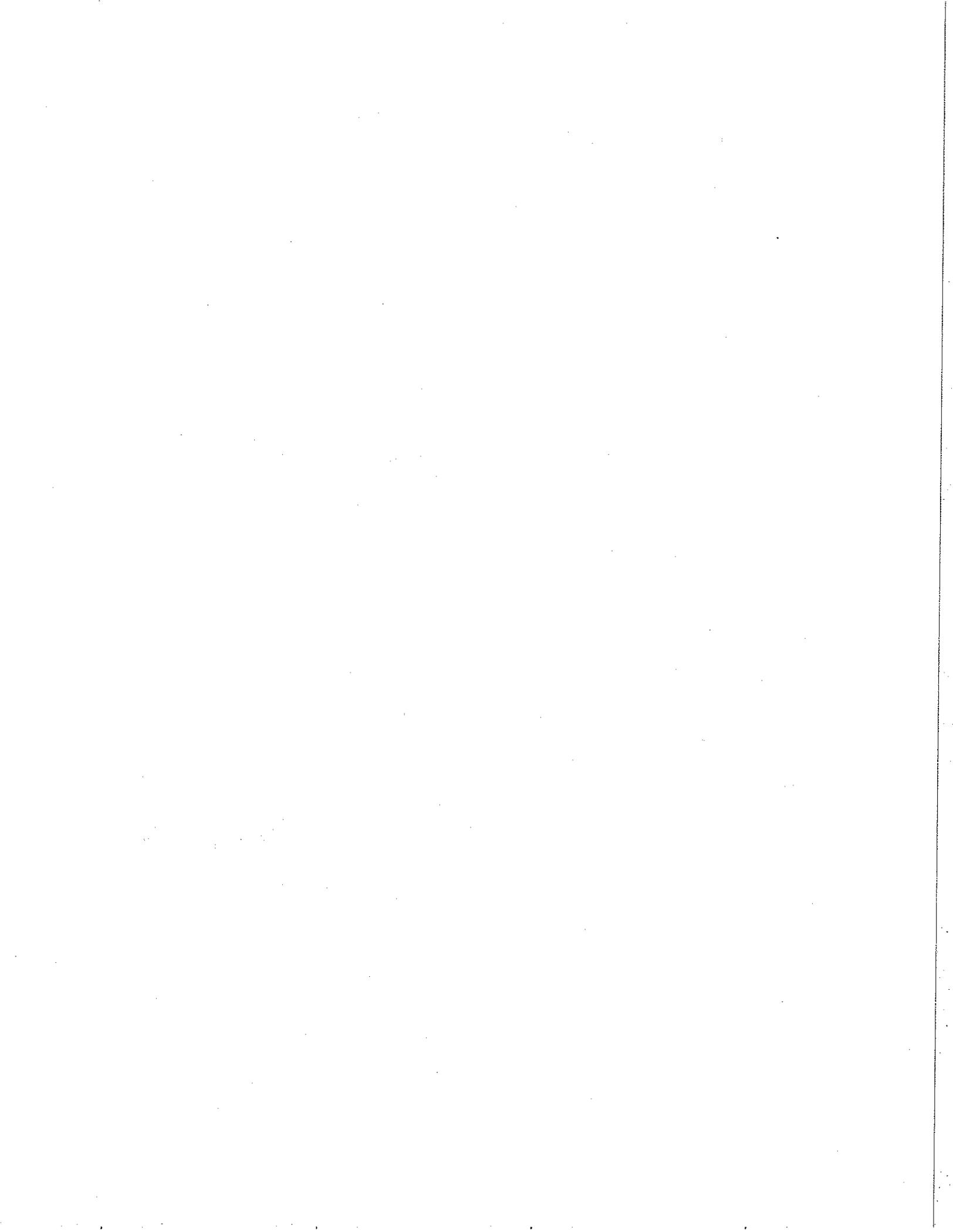
The claimant, the Estate of Klare Wollander, seeks compensation in the amount of \$2,273,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the 54.74-acre property into 19 parcels and to develop a dwelling on each parcel. The subject property is located at 10985 Sunnyside Road SE, near Jefferson, in Marion County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is not valid because the claimant is not an owner of the subject property. (See the complete recommendation in Section VI. of this report.)

¹ Also known as Jon Adam Wollander

² 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).



III. COMMENTS ON THE CLAIM

Comments Received

On August 25, 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 under ORS 197.352. Comments concerning the effects a use of the property may have on surrounding areas generally are 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:

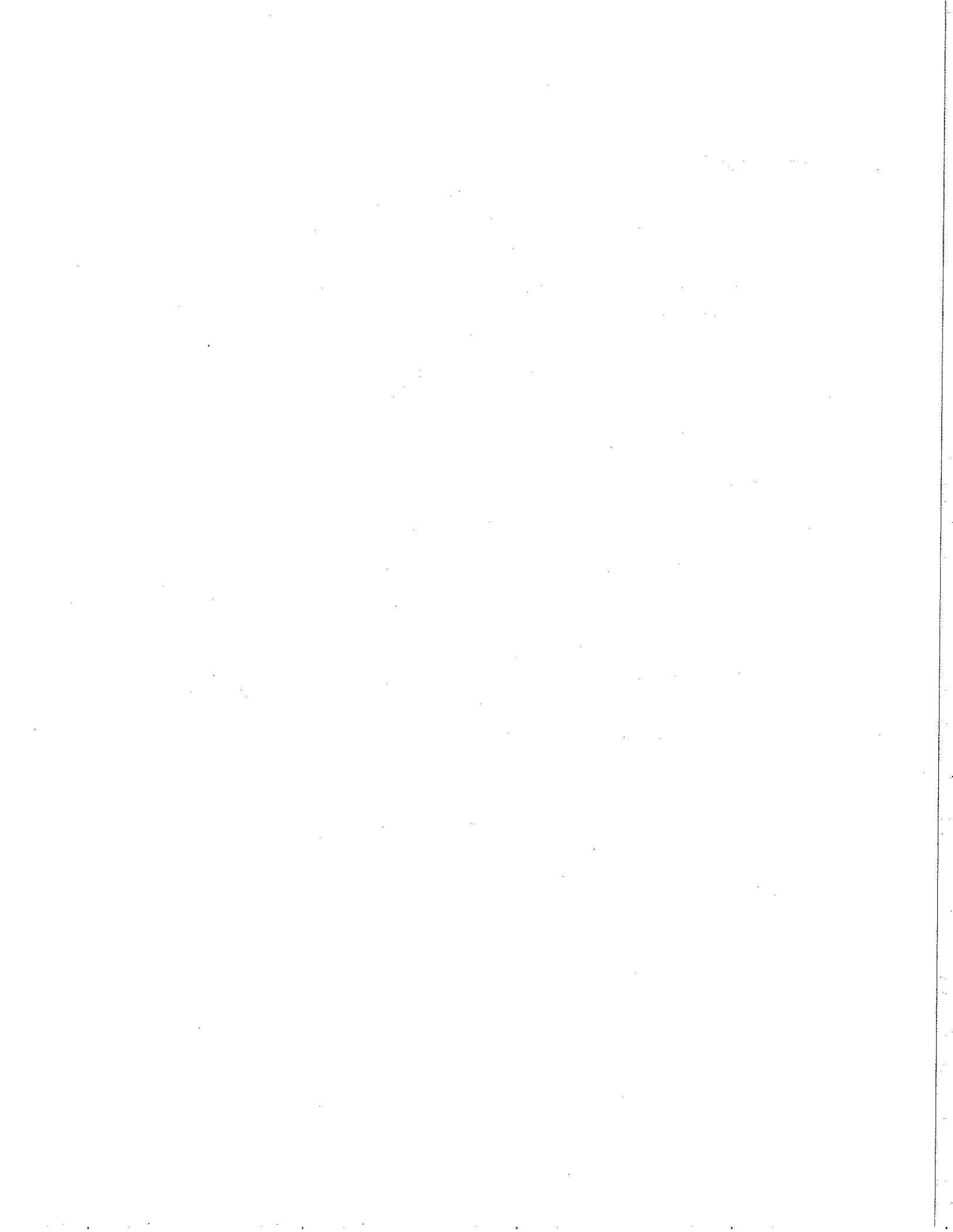
1. For claims arising from land use regulations enacted prior to the effective date of Ballot Measure 37 (December 2, 2004), within two years of that effective date or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever 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 June 1, 2005, for processing under OAR 125, division 145. The claim identifies statewide planning goals, ORS 197 and 215 and OAR chapter 660 as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of 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

In a decision and final order issued April 11, 2006, the department determined that the claimant, the Estate of Klare Wollander, acquired the subject property on July 8, 2000, the date of Klare Wollander’s death. The decision and final order also noted that Klare Wollander acquired the subject property from her husband, Jon R. Wollander, who acquired the property on October 17, 1951, August 12, 1952, and September 10, 1952, as evidenced by three warranty deeds included with the claim. However, subsequent to the issuance of that decision and order, the department has determined that the claimant, Estate of Klare Wollander, is not and was not an owner of the subject property on April 11, 2006, when the claim was decided. Rather, on July 9, 1994, Klare Wollander deeded the subject property to “Klare Wollander, Jon R. Wollander and Jayson M. Wollander – as Tenants-In-Common but with the rights of survivorship.” (See Warranty Deed, dated July 9, 1994, and recorded July 21, 2000, in Marion County Records, Reel 1704, page 581.) Accordingly, on the date of Klare Wollander’s death, the property transferred to Jon R. Wollander and Jayson M. Wollander, and did not become part of Klare Wollander’s estate. The Estate of Klare Wollander did not retain any ownership interest in the property following Klare Wollander’s death.

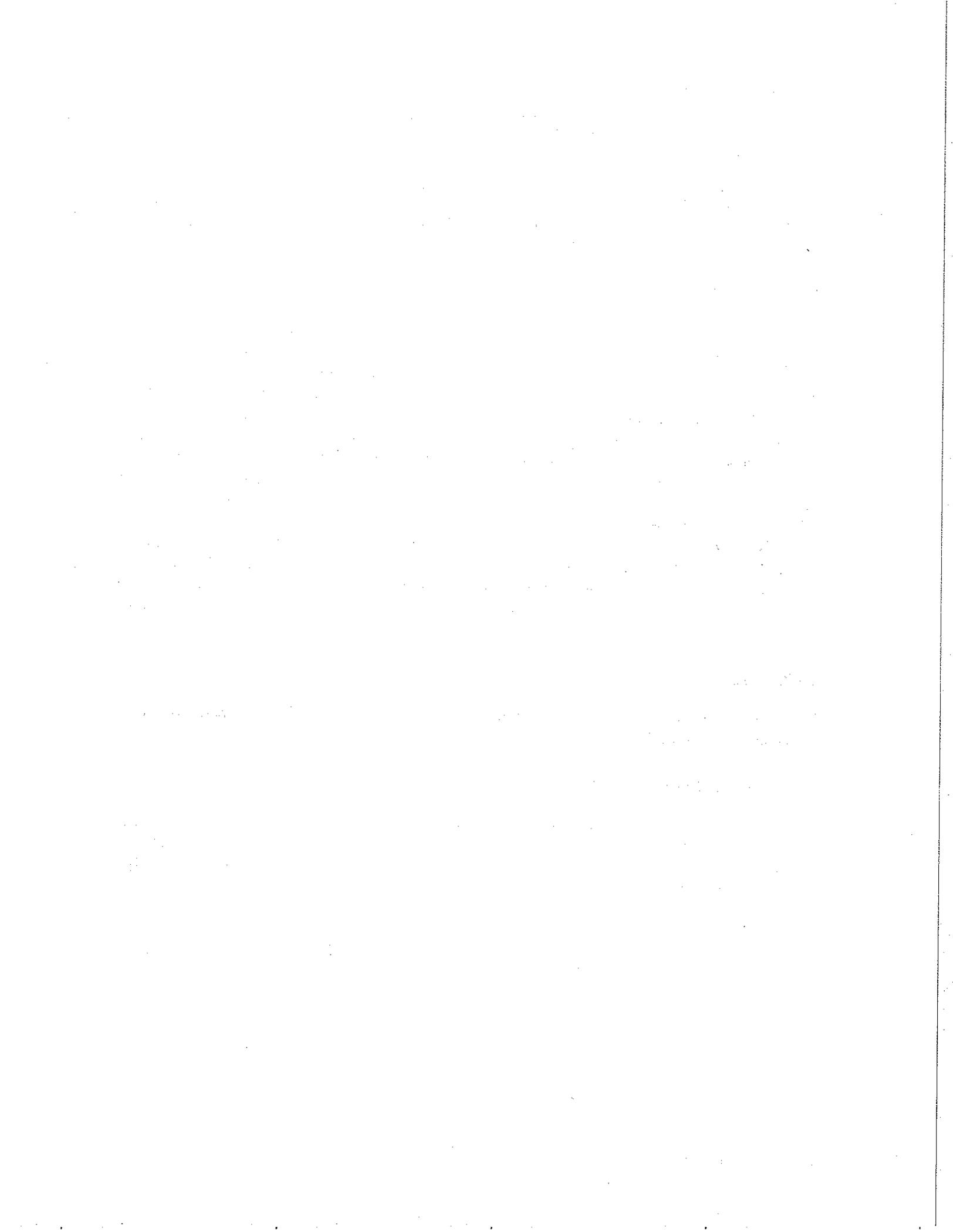
Conclusions

The claimant, the Estate of Klare Wollander, is not an “owner” of the subject property as that term is defined by ORS 197.352(11)(C).

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 claimant’s 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 claimant or a family member acquired the property.

As explained in Section V.(1), the claimant, Estate of Klare Wollander, is not an “owner” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Land Conservation and Development Commission (the Commission) or the department restrict the claimant’s use of the subject private real property with the effect of reducing the fair market value of the property.



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.”

As explained in Section V.(1) of this report, the claimant, Estate of Klare Wollander, is not an “owner” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict the claimant’s use of the subject property with the effect of reducing the fair market value of the property.

4. Exemptions Under ORS 197.352(3)

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

As explained in Section V.(1) of this report, the claimant, Estate of Klare Wollander, is not an “owner” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to this claim.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced 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 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

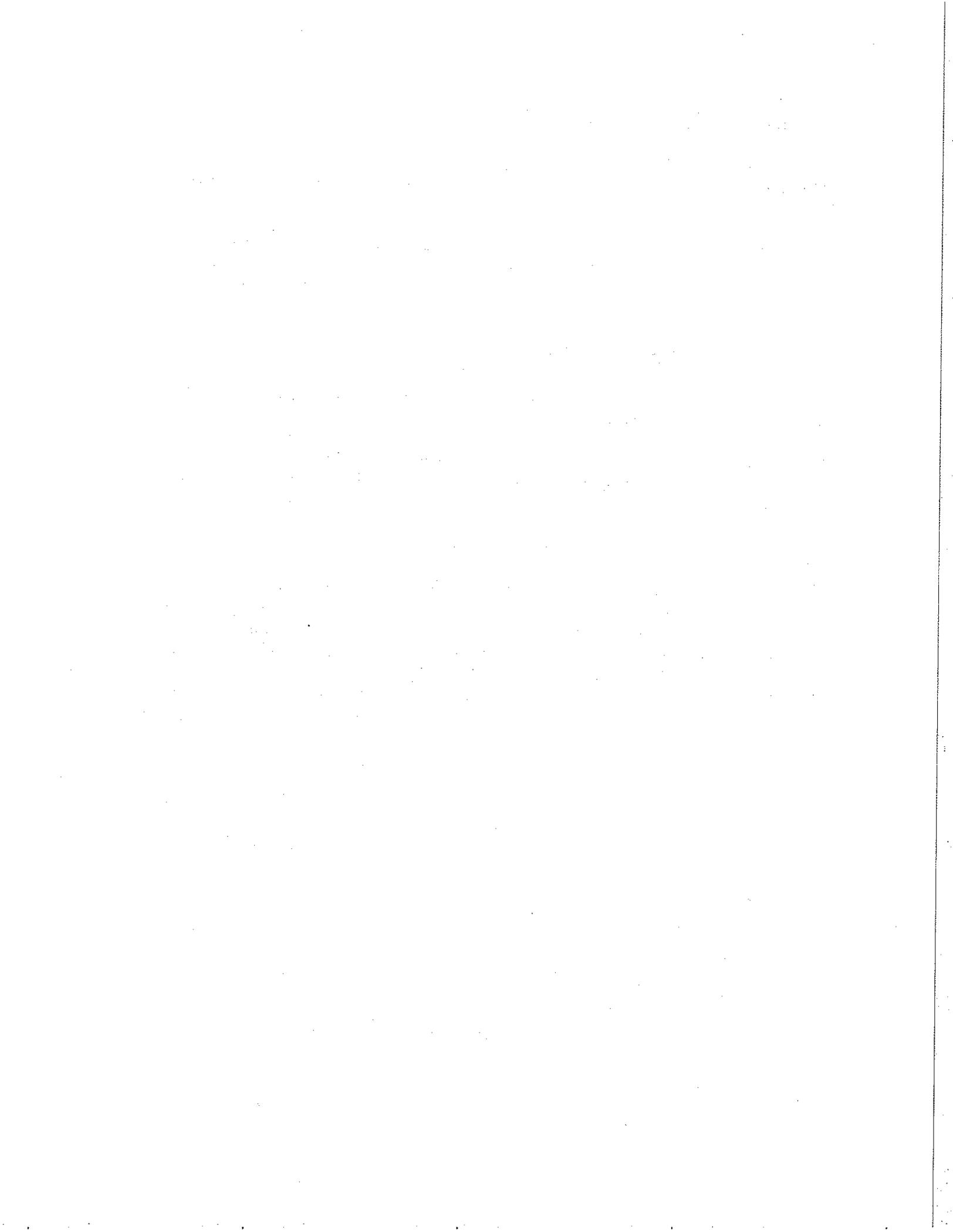
Based on the record, the department finds that the claim is not valid because the claimant is not an “owner” of the subject property as that term is defined in ORS 197.352(11)(C).

Conclusions

Based on the record before the department, the claimant, Estate of Klare Wollander, has not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because the claimant is not an owner of the subject property. Therefore, the department recommends that this claim be denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 15, 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 were taken into account by the department in the issuance of the final report on April 11, 2006.

