

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. M129715  
(BALLOT MEASURE 37) OF )  
John H. Frederick Jr. and Jane G. Frederick, CLAIMANTS )

Claimants: John H. Frederick Jr. and Jane G. Frederick (the Claimants)

Property: Township 2S, Range 2W, Section 1, Tax lot 3100  
Washington 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 claimants' division of the 17.89-acre subject property into four parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33, enacted or adopted after the claimants 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 they acquired 13.89 acres of the property on August 14, 1965, and the remaining four acres on February 10, 1977.
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 August 14, 1965, and February 10, 1977. On February 10, 1977, the relevant portion of the subject property was subject to the applicable provisions of the statewide planning goals, and in particular, Goal 14 in effect at that time.

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.

This Order is entered by the Deputy 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

  
Cora R. Parker, Deputy Director  
DLCD  
Dated this 11<sup>th</sup> day of January, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 11<sup>th</sup> day of January, 2007.

## **NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF**

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

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

### **FOR INFORMATION ONLY**

The Oregon Department of Justice has advised the Department of Land Conservation and Development that “[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost.”

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**  
**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**  
**Final Staff Report and Recommendation**

January 11, 2007

**STATE CLAIM NUMBER:** M129715

**NAMES OF CLAIMANTS:** John H. Frederick Jr.  
Jane G. Frederick

**MAILING ADDRESS:** 13622 SW Pleasant Valley Road  
Beaverton, Oregon 97007

**PROPERTY IDENTIFICATION:** Township 2S, Range 2W, Section 1  
Tax lot 3100<sup>1</sup>  
Washington County

**DATE RECEIVED BY DAS:** July 20, 2006

**180-DAY DEADLINE:** January 16, 2007

**I. SUMMARY OF CLAIM**

The claimants, John Frederick Jr. and Jane Frederick, seek compensation in the amount of \$1.8 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 claimants desire compensation or the right to divide the approximately 17.89-acre subject property into four parcels and to develop a dwelling on each parcel. The subject property is located on the east side of SW Pleasant Valley Road, south of its intersection with Scholls Ferry Road, near Beaverton, in Washington 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. 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 the claimants' division of the approximately 17.89-acre subject property into four parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide

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<sup>1</sup> As filed on July 20, 2006, the claim also included tax lots 2101 and 2303, which adjoin tax lot 3100. On November 27, 2006, department staff was advised by telephone that the claimants were withdrawing the claim as to tax lots 2101 and 2303 and a portion of tax lot 3100 located in Section 12 of T2S R2W. As a result, the claim relates only to the remaining 17.89-acre portion of tax lot 3100 (which totals 30.44 acres) located in Section 1 of T2S R2W. Accordingly, for purposes of this claim, the subject property is identified as only the 17.89-acre portion of tax lot 3100 located in Section 1 of T2S R2W.

Planning Goals 3 (Agricultural Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rule (OAR) 660-04-0040 and OAR 660, division 33, enacted or adopted after the claimants acquired the subject property. 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 when they acquired 13.89 acres of the subject property on August 14, 1965, and the remaining four acres on February 10, 1977. (See the complete recommendation in Section VI of this report.)

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

#### **Comments Received**

On November 16, 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, 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 subject 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 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 criterion 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 criterion, whichever is later.

#### **Findings of Fact**

This claim was submitted to DAS on July 20, 2006, for processing under OAR 125, division 145. The claim identifies ORS 215; OAR 660, division 33; and Washington County's AF-10, AF-20 and Exclusive Farm Use (EFU) zoning, as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

## **Conclusions**

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

## **V. ANALYSIS OF CLAIM**

### **1. Ownership**

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

### **Findings of Fact**

The claimants, John Frederick Jr. and Jane Frederick, acquired 13.89 acres of the 17.89-acre subject property on August 14, 1965, as reflected by a deed included with the claim. They acquired the four-acre portion of the property on February 10, 1977, as reflected by a deed included with the claim.<sup>2</sup> The Washington County Assessor’s Office confirms the claimants’ current ownership of the subject property.

## **Conclusions**

The claimants, John Frederick Jr. and Jane Frederick, are “owners” of the subject property, as that term is defined by ORS 197.352(11)(C), as of August 14, 1965, for 13.89 acres, and as of February 10, 1977, for four 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 the 17.89-acre subject property into four parcels and to develop a dwelling on each parcel, and the desired development is prohibited by current land use regulations.

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<sup>2</sup> The May 16, 2006, Washington County Measure 37 Recommendation & Staff Report for the subject property states that an approximately 2.7-acre portion of tax lot 3100 that abuts the east lot line of tax lot 2303 was sold to Richard and Darlene Peters in 1970 and reacquired by the claimants on April 4, 1977. This is not consistent with the deeds included with the claim. It appears to department staff that the claimants acquired several parcels of land jointly with the Peterses in 1965, and the Peterses conveyed their interest to the claimants in several subsequent transactions. See the claim file.

The claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land, and on the applicable provisions of state law that regulate rural residential zoning.

An 11.2-acre portion of the 17.89-acre subject property is zoned by Washington County as Agriculture and Forest (AF-20), an EFU zone, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because this portion of the property is "agricultural land" as defined by Goal 3.<sup>3</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.213, 215.263 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU zoned land in marginal lands counties into parcels smaller than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone in a marginal lands county under ORS 215.213. OAR 660-033-0130(4)(e) (applicable to non-farm dwellings in marginal lands counties) became effective on August 7, 1993. 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 remaining 6.7-acre portion of the subject property is zoned by Washington County as Agriculture and Forest 10-Acre (AF-10), a rural residential zone. The AF-10 zone is consistent with Goal 14, which generally requires that land outside of urban growth boundaries be used for rural uses. Washington County's AF-10 zone was adopted on July 30, 1984, and requires a minimum of 10 acres for the creation of a new lot or parcel.

Goal 14 was 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 use. In 2000, as a result of a 1986 Oregon Supreme Court decision,<sup>4</sup> 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 that is already in effect (OAR 660-004-0040(7)(c)). Some relief from this provision is available for lots or parcels having more than one permanent habitable dwelling

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<sup>3</sup> The 11.2-acre portion is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

<sup>4</sup> *1000 Friends of Oregon v. LCDC ("Curry County")*, 301 Or 447 (1986).

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)). Because Washington County's AF-10 zone was in effect on October 4, 2000, and requires a minimum lot size of 10 acres, the minimum lot size for any new lot or parcel in that zone must equal or exceed 10 acres.

The claimants acquired 13.89 acres of the subject property currently zoned AF-20 and 2.7 acres of the 6.7 acres currently zoned AF-10 on August 14, 1965, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. At that time, the property was zoned F-1 by Washington County.<sup>5</sup>

The claimants acquired four acres of the 6.7-acre, AF-10-zoned portion of the subject property in 1977, after the adoption of the statewide planning goals, but before the Commission acknowledged Washington County's land use regulations to be in compliance with statewide planning goals pursuant to ORS 197.250 and 197.251. The four acres were zoned AF-10 by the county at that time. However, because the Commission had not acknowledged Washington County's plan and land use regulations when the claimants acquired that portion of the property in 1977, the property was considered resource land at the time the claimants acquired it, and the statewide planning goals, and particularly Goals 3 (Agricultural Lands) and 4 (Forest Lands), in addition to Goal 14, would have applied directly to the claimants' property had they sought the desired use at the time they acquired that portion of the property.<sup>6</sup> 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 ultimately acknowledged as exceptions land pursuant to Goal 2, and zoned by the county for rural 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 Goal 14. The claim does not establish whether the claimants' desired division of this portion of the subject property could have satisfied this standard.<sup>7</sup>

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<sup>5</sup> According to the May 16, 2006, Washington County Measure 37 Recommendation & Staff Report, the F-1 District had no minimum lot size, but it permitted single-family dwellings only in conjunction with an agricultural or forest use.

<sup>6</sup> 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).

<sup>7</sup> When Washington County's plan was acknowledged for compliance with Goal 14 on July 30, 1984, this portion of the subject property was zoned AF-10, which allowed one detached dwelling per lot with a 10-acre minimum lot size.

## **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards for EFU and rural residential lands established by applicable provisions of Goal 3, ORS 215, and OAR 660, division 33, were all enacted or adopted after the claimants acquired 13.89 acres of the 17.89-acre subject property in 1965, and do not allow the desired division or residential development of the property. These laws restrict the use of the subject property relative to the uses allowed when the claimants acquired the property.

The minimum lot size requirements for rural residential lots or parcels established by Goal 14 and OAR 660-004-0040 were adopted after the claimants acquired four acres of the subject property in 1977 and do not allow the desired division of the property. However, when the claimants acquired this portion of the subject property in 1977, the statewide planning goals, and in particular, the general requirements of Goal 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 the claimants acquired this four-acre portion of the subject 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 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 regulations (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 \$1.8 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 without land use restrictions.<sup>8</sup>

## **Conclusions**

As explained in Section V.(1) of this report, the claimants are John Frederick Jr. and Jane Frederick, who acquired a portion of the subject property on August 14, 1965, and the remainder on February 10, 1977. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of this portion of the subject property and have the effect of

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<sup>8</sup> This amount is based on a division of the original 39.85 acres into six parcels, and not on the revised claim to divide 17.89 acres into four parcels.

reducing its 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 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 property is a reduction of \$1.8 million.

Without an appraisal or other documentation, without verification of whether or the extent to which the claimants' desired use of the property would have been permitted at the time they acquired it, and without evaluation of the reduction in value for only that 17.89-acre portion of the property that is now subject to this claim, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the 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 Goals 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33, which Washington County has implemented through its current AF-10 and AF-20 zones. With the exception of provisions of Goal 14 adopted before the claimants acquired four acres of the subject property zoned AF-10 on February 10, 1977, these land use regulations were not in effect when the claimants acquired the subject 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, with the exception of provisions of Goal 14 in effect when the claimants acquired a four-acre portion of the subject property in 1977, none of the general goal and rule restrictions on division of agricultural and rural residential land were in effect when the claimants acquired 13.89 acres of the property in 1965. As a result, under ORS 197.352(3)(E), these laws are not exempt for the 13.89-acre portion of the property. Provisions of the statewide planning goals, and in particular, Goal 14 in effect when the claimants acquired a four-acre portion of the property in 1977 are exempt under ORS 197.352(3)(E) and will continue to apply to that portion of the subject property.

Other laws in effect when the claimants acquired the subject property are also 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 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. 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 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 laws that restrict the use of the subject 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 subject 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 \$1.8 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 subject 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 Frederick Jr. and Jane Frederick to use the subject property for a use permitted at the time they acquired a 13.89-acre portion on August 14, 1965, and for a use permitted at the time they acquired the remaining four acres on February 10, 1977.

## **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 the claimants' division of the 17.89-acre subject property into four parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33, enacted or adopted after the claimants 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 they acquired 13.89 acres of the property on August 14, 1965, and the remaining four acres on February 10, 1977.
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 August 14, 1965, and February 10, 1977. On February 10, 1977, the relevant portion of the subject property was subject to the applicable provisions of the statewide planning goals, and in particular, Goal 14 in effect at that time.
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.

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

The department issued its draft staff report on this claim on December 21, 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.