Oregon
Theodore R. Kulongoski, Governor

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August 13, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130790

Claimants: Phyllis J. Breshears and Claude F. Breshears Jr.

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

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR	)	FINAL ORDER
COMPENSATION UNDER ORS 197.352	)	CLAIM NO. M130790
(BALLOT MEASURE 37) OF	)	
Phyllis J. Breshears and Claude F. Breshears Jr., CLAIMANTS	)	

Claimants: Phyllis J. Breshears and Claude F. Breshears Jr. (the Claimants)

Property: Township 11S, Range 3W, Section 21, Tax lot 701, Linn 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 Phyllis and Claude Breshears' development of a recreational vehicle park and lake and accessory uses on the 19.67-acre subject property: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply only to the extent necessary to allow Phyllis and Claude Breshears to use the subject property for the use described in this report, and only to the extent that use was permitted when the claimants acquired the property on February 5, 1985. The department acknowledges that the relief to which the claimants are entitled may not allow them to develop the property in the manner set forth in the claim.

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 when the claimants acquired the property on February 5, 1985, including the provisions of Goal 3, ORS 215 and OAR 660, division 5, then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license

or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the 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 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 13th day of August, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Janice K. Dean, SSD Administrator
DAS, State Services Division
Dated this 13th day of August, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.

2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

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

FOR INFORMATION ONLY

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

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

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

August 13, 2007

STATE CLAIM NUMBER:	M130790
NAMES OF CLAIMANTS:	Phyllis J. Breshears Claude F. Breshears Jr.
MAILING ADDRESS:	20 E. Airport Road #303 Lebanon, OR 97355
PROPERTY IDENTIFICATION:	Township 11S, Range 3W, Section 21 Tax lot 701 Linn County
DATE RECEIVED BY DAS:	November 16, 2006
DEADLINE FOR FINAL ACTION:[1]	May 9, 2008

I. SUMMARY OF CLAIM

The claimants, Phyllis and Claude Breshears, seek compensation in the amount of $150,000 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 claimants desire compensation or the right to develop a recreational vehicle park and lake with two dwellings, camping cabins, a convenience store, an office and shower and laundry facilities as accessory uses on the 19.67-acre subject property. The subject property is located at the northeast corner of the intersection of Three Lakes Road and Midway Road, near Albany, in Linn 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 Phyllis and Claude Breshears' development of a recreational vehicle park and lake and accessory uses on the 19.67-acre subject property: applicable provisions of Statewide

[1] ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33. 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 the claimants acquired the property on February 5, 1985. The department acknowledges that the relief to which the claimants are entitled may not allow them to develop the property in the manner set forth in the claim.
(See the complete recommendation in Section VI. of this report).

III. COMMENTS ON THE CLAIM

Comments Received

On May 24, 2007, 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 do 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 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 November 16, 2006, for processing under OAR 125, division 145. The claim identifies House Bill (HB) 3661 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, Phyllis and Claude Breshears, acquired the subject property from Land-Dee Corporation, Inc. on February 5, 1985, as reflected by a quitclaim deed included with the claim. Land-Dee Corporation, Inc., a corporation owned by the Breshears, acquired the subject property on August 1, 1979, as reflected by a land sale contract included with the claim.[2] The Linn County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Phyllis and Claude Breshears, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C) as of February 5, 1985. Land-Dee Inc. is a "family member" of the claimants, as defined by ORS 197.352(11)(A), acquired the subject property on August 1, 1979.[3]

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.

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[2] The Claude F. Breshears Revocable Trust also acquired the subject property from Land-Dee Corporation, Inc. on December 3, 1993, as reflected by a warranty deed included with the claim. However, at the time, the subject property was transferred to the Claude F. Breshears Revocable Trust on December 3, 1993, the grantor, Land-Dee Corporation, Inc. did not appear to have an interest in the property. The subject property was later transferred to Phyllis J. Breshears, as trustee for the Phyllis J. Breshears Revocable Trust, on May 8, 1996, as evidenced by a warranty deed included with the claim, with Phyllis and Claude Breshears as co-trustees. Unless additional evidence is submitted to indicate that Land-Dee Corporation, Inc. had a valid interest in the subject property on December 3, 1993, when the property was conveyed to the Claude F. Breshears Revocable Trust, there appears to be some question as to whether the current ownership of the subject property in the Phyllis J. Breshears Revocable Trust is valid. Nevertheless, the claimants have established their ownership for purposes of this claim, as of February 5, 1985.

[3] Under ORS 197.352(11)(A), legal entities can be "family members" of individuals who are owners of property under ORS 197.352(11)(C). However, legal entities cannot have family members under the statute.

Findings of Fact

The claim indicates that the claimants desire to develop a recreational vehicle park and lake with two dwellings, camping cabins, a convenience store, an office and shower and laundry facilities as accessory uses on the 19.67-acre subject property and that current land use regulations prohibit the desired use.[4]

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimants' property is zoned EFU by Linn County 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.[5] 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 215.283 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, restrict commercial uses and establish standards for development of private parks on EFU-zoned lands.

ORS 215.283(2)(a) allows commercial uses "that are in conjunction with farm use" and ORS 215.283(2)(c) generally allows "private parks, playgrounds, hunting and fishing preserves and campgrounds" on EFU-zoned land, subject to approval by the local governing body. Uses generally allowed under ORS 215.283(2) are also subject to compliance with ORS (215.296)(1)(a) and (b). OAR 660-033-0120(3) (limiting uses on high-value farm land) was adopted by the Commission to comply with HB 3661 and became effective on March 1, 1994. Under OAR 660-033-0120, Table 1, "private parks, playgrounds, hunting and fishing preserves and campgrounds are prohibited on high-value farm land. On non-prime-value farm land, OAR 660-033-0130(19) establishes standards for campgrounds allowed under ORS 215.283(2)(c). That rule specifically prohibits "separate sewer, water or electric service hook-ups to individual camp sites."[6] OAR 660-033-0120, Table 1 establishes the list of commercial activities allowed

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[4] The claimants summarily list HB 3661 (enacted in 1993) as applicable to this claim, but do not establish how it either applies to the claimants' desired use of the subject property or restricts 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 or do not restrict the use of the claimants' property with the effect of reducing its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' desired use of the subject property, based on the claimants' description of their desired use.

[5] The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service (NRCS) Class I–IV soils. According to the NRCS soil survey, the subject property is comprised of 100 percent high-value farm land, as defined under OAR 660-033-0020(8).

[6] OAR 660-33-0130(19) provides, in full:

> Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.352 and OAR 660, Division 4. A campground is an area devoted to overnight temporary se for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campsites may be occupied by a tent, travel trailer or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to

on agricultural lands, which is generally restricted to commercial activities in conjunction with a farm use.

The claimants' family first acquired the subject property in August 1979, and the claimants acquired the property in February 1985, after the adoption of the statewide planning goals, but before the Commission acknowledged Linn County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.[7] In August 1979 and in February 1985, the subject property was zoned by Linn County as EFU, which permitted private parks and campgrounds as conditional uses. However, because the Commission had not acknowledged the county's plan and land use regulations when the claimants' family acquired the subject property on August 1, 1979, and when claimants acquired it on February 5, 1985 , the statewide planning goals, Goal 3 in particular, and applicable provisions of ORS 215, applied directly to the claimants' property when the claimants and their family acquired it.[8]

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. Under the Goal 3 standards in effect in August 1979 and February 1985, commercial uses were conditionally allowed under ORS 215.213(2)(a) (1977 edition) and ORS 215.283(2)(a) (1983 edition), only to the extent they were "in conjunction with farm use." At that time, ORS 215.213(2)(c) (1979 edition) and ORS 215.283(2)(c) (1983 edition) allowed "private parks, playgrounds, hunting and fishing preserves and campgrounds."

The claim does not establish whether or to what extent the claimants' desired recreational vehicle park, lake and accessory uses could have satisfied the standards for commercial uses or a private park or campground under ORS 215.213 (1977) in effect when the claimants' family acquired the property or under ORS 215.283 when the claimants acquired the property.

Conclusions

The current zoning requirements and non-farm use standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimants' family acquired the subject property in 1979, and do not allow the claimants' desired development of the subject property. However, the claim does not establish whether or the

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individual camp sites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

[7] Linn County's comprehensive plan and land use regulations were acknowledged by the Commission for compliance with Goal 3 on July 18, 1985.

[8] 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 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).

extent to which the claimants' desired use of the subject property complies with the standards for development under the requirements of Goal 3 and ORS 215 in effect when the claimants' family acquired the subject property on August 1, 1979. To the extent that any portion of the claimants' desired use constitutes a commercial use of the property, that commercial use would not have been permitted at the time the claimants acquired the property.

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 $150,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on the claimants' assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Phyllis and Claude Breshears whose family first acquired the subject property in 1979. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants' family acquired the subject property restrict the claimants' desired use of the property. The claimants estimate that the effect of the regulations on the subject property's fair market value is a reduction of $150,000.

Without an appraisal or other documentation, and without verification of whether or the extent to which the claimants' desired use of the property was allowed under the standards in effect when the claimants' family 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 subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the claimants' family acquired 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.

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 Linn County has implemented through its current EFU zone. With the exception of applicable

provisions of Goal 3 and ORS 215 in effect on August 1, 1979, all of these land use regulations were enacted or adopted after the claimants' family acquired the subject property.

Conclusions

Without a specific development proposal for the 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 general statutory, goal and rule restrictions on non-farm development of the subject property are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after the claimants' family acquired the subject property on August 1, 1979. Applicable provisions of Goal 3, ORS 215 and OAR 660, division 5, in effect when the claimants or their family acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation.

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

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

VI. FORM OF RELIEF

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

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the

effect of reducing the fair market value of the subject property by $150,000. 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 to claimants' desired use of the subject property was allowed under the standards in effect when the claimants' family acquired the property. Nevertheless, based on the record for this claim, the department acknowledges 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 Phyllis and Claude Breshears to use the subject property for a use permitted at the time they acquired the property on February 5, 1985.

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 Phyllis and Claude Breshears' development of a recreational vehicle park and lake and accessory uses on the 19.67-acre subject property: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply only to the extent necessary to allow Phyllis and Claude Breshears to use the subject property for the use described in this report, and only to the extent that use was permitted when the claimants acquired the property on February 5, 1985. The department acknowledges that the relief to which the claimants are entitled may not allow them to develop the property in the manner set forth in the claim.

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 when the claimants acquired the property on February 5, 1985, including the provisions of Goal 3, ORS 215 and OAR 660, division 5, then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on July 13, 2007. 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.