Oregon
Theodore R. Kulongoski, Governor

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November 1, 2007

To: Interested Persons

From: Cora R. Parker, Acting Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M131289

Claimants: Robert C. Jenkins Jr. and Beverly A. Jenkins

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. M131289
(BALLOT MEASURE 37) OF	)
Robert C. Jenkins, Jr. and Beverly A. Jenkins, CLAIMANTS	)

Claimants: Robert C. Jenkins, Jr. and Beverly A. Jenkins (the Claimants)

Property: Township 38S, Range 1E, Section 3: tax lot 500
Township 38S, Range 1E, Section 4: tax lot 100
Township 38S, Range 1E, Section 9: tax lot 100
Township 38S, Range 1E, Section 10: tax lot 101
Jackson 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 Robert and Beverly Jenkins' partition of the 1,217.32-acre subject property into one 17-acre parcel for quarry operations and sixty 20-acre parcels and to their development of a dwelling on each resulting 20-acre parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after October 17, 1977. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on October 17, 1977.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the property for the use described in this report, subject to the standards in effect on October 17, 1977. On that date, the property was subject to applicable provisions of Goal 3 and ORS 215 then in effect.

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

4. Any use of the 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.

6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

This Order is entered by the Acting 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 Manager for the Measure 37 Services Unit 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:

Cora R. Parker, Acting Director
DLCD
Dated this 1st day of November, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Carla Ploederer, Manager
DAS, Measure 37 Services Unit
Dated this 1st day of November, 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

November 1, 2007

STATE CLAIM NUMBER:	M131289
NAMES OF CLAIMANTS:	Robert C. Jenkins, Jr. Beverly A. Jenkins
MAILING ADDRESS:	8509 Canterbury Drive Annandale, Virginia 22003
PROPERTY IDENTIFICATION:	Township 38S, Range 1E Section 3: tax lot 500 Section 4: tax lot 100 Section 9: tax lot 100 Section 10: tax lot 101 Jackson County
OTHER CONTACT INFORMATION:	Frank Walker & Associates PO Box 7170 Salem, Oregon 97301
DATE RECEIVED BY DAS:	November 27, 2006
DEADLINE FOR FINAL ACTION:[1]	May 20, 2008

I. SUMMARY OF CLAIM

The claimants, Robert and Beverly Jenkins, seek compensation in the amount of $8,450,340 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 1,217.32-acre subject property into one 17-acre parcel for quarry operations and sixty 20-acre parcels and to develop a dwelling on each resulting 20-acre parcel. The subject property is located on Valley View Road and Antelope Road, near Talent, in Jackson County. (See claim.)

[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.

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 Robert and Beverly Jenkins' partition of the 1,217.32-acre subject property into one 17-acre parcel for quarry operations and sixty 20-acre parcels and to their development of a dwelling on each resulting 20-acre parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after October 17, 1977. 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 the property on October 17, 1977. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On July 3, 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, no written comments were received in response to the 15-day notice.

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 27, 2006, for processing under OAR 125, division 145. The claim identifies provisions of ORS 197, 215 and 433 and OAR 660, division 33, as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of 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, Robert and Beverly Jenkins, acquired the subject property on October 17, 1977, as reflected by a warranty deed included with the claim. The Jackson County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Robert and Beverly Jenkins, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C), as of October 17, 1977.[2]

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 acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the 1,217.32-acre subject property into one 17-acre parcel for quarry operations and sixty 20-acre parcels and to develop a dwelling on each resulting 20-acre parcel, and that current land use regulations prevent the desired use.[3]

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[2] It appears the claimants acquired the subject property from family members. However, the claimants have not asserted that they acquired the property from a family member or provided documentation to establish a family relationship. Absent evidence to establish that the claimants acquired the property from a family member, the department cannot evaluate the claim for compensation based on family ownership.

[3] The claimants summarily list numerous state land use laws as applicable to this claim, but do 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 or do not restrict the claimants' desired use of the 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.

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 Jackson 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.[4] 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 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for 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 under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994.[5]

ORS 215.283(2), ORS 215.296 ORS 215.298, ORS 215.780, enacted or adopted pursuant to Goal 3, establish standards for development of aggregate mining operations on farm-zoned land.

ORS 215.283(2)(b)(B) allows "mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298." In addition, all uses allowed under ORS 215.283(2) are also subject to compliance with ORS 215.296.[6] ORS 215.298 requires a local land use permit for mining more than 1,000 cubic yards of material or excavation preparatory to mining of a surface area of more than one mile, and allows permits only on proposed mining or aggregate site that are included on an acknowledged inventory. [7]

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[4] The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I–IV soils.

[5] The Commission adopted amendments to OAR 660-033-0100, -0130 and -0135 to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. These amendments clarified but did not further restrict dwelling standards under OAR 660, division 33, for EFU-zoned land.

[6] ORS 215.296 allows uses permitted under ORS 215.283(2) to be approved only when the local governing body or designate determines that "the use will not: (a) force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or (b) significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use."

[7] Operations for the exploration, mining and processing of aggregate and other mineral resources or other subsurface resources have been allowed uses on land zoned EFU since SB 101 was enacted on October 5, 1973 (chapter 503 Or Laws 1973). In 1989, ORS 215.213(2) was amended to delete the previous review standard "if the use meets reasonable standards adopted by the governing body" and replaced it with the current standards for review under ORS 215.296 for uses and activities listed in ORS 215.213(2) or 215.283(2) (Sections 1, 2 and 6 of chapter 861 Or Laws 1989, HB 2682). The 1989 Act also amended ORS 215.213 and 215.283 to require that the mining of aggregate under ORS 215.213(2) (d) and 215.283(2) (b) be subject to the conditions under ORS 215.298 (Section 7 of chapter 861 Or Laws 1989, HB 2682).

The claimants' desired rock quarry use is permitted in Jackson County's EFU zone as a conditional use.[8]

The claimants acquired the subject property after the adoption of the statewide planning goals, but before the Commission acknowledged Jackson County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.[9] At that time, the property was zoned Open Space Reserve (OSR-20) by Jackson County, which established a 20-acre minimum lot size for the creation of new lots or parcels and allowed dwellings as a conditional use. However, because the Commission had not acknowledged the county's plan and land use regulations when the claimants acquired the subject property on October 17, 1977, the statewide planning goals, and Goal 3 in particular, applied directly to the claimants' property when they acquired it.[10]

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the claimants' opportunity to divide the subject property when they acquired it in 1977 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1)

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[8] Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), also enacted in 1975, establishes procedures and criteria for inventorying and evaluating Goal 5 resources and for developing land use programs to conserve and protect significant Goal 5 resources. Aggregate and mineral resources are resources that are subject to the provisions of Goal 5 and the Goal 5 administrative rule (OAR 660-023-0180). In 1981, the Commission adopted OAR 660, division 16, establishing the process for applying Goal 5 to significant aggregate sites. In 1996, the Commission adopted OAR 660, division 23, replacing OAR 660, division 16, with a new process for inventories, evaluating, and designating significant aggregate sites under Goal 5. The rule was later amended in 2004. The intent of Goal 5 and the implementing regulations is to identify and protect significant resources, including mineral and aggregate resources, to allow their use. The rule also protects significant resources (including aggregate sites) from conflicting uses associated with uses on neighboring properties.

OAR 660-023-0030(2) through (6) are the general rules governing the inventory process used to locate, evaluate resources, determine significance, and develop a program to protect Goal 5 resources. The rules specify that local governments are to apply the criteria in OAR 660-023-0180(3) or (4), whichever is applicable, rather than OAR 660-023-0030(4), in determining whether an aggregate resource site is significant (OAR 660-023-0180(2)(b)). The claimants' property has not been determined to be a significant aggregate resource site by the county and, therefore, OAR 660-023-0030(2) through (6) do not apply to the use of this site by the claimants for the mining of aggregate.

[9] Jackson County's comprehensive plan and land use regulations were acknowledged by the Commission for compliance with Goal 3 on May 16, 1983.

[10] 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).

appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.

Under the Goal 3 standards in effect on October 17, 1977, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition).

The claim does not establish whether or to what extent the claimants' desired use of the subject property was allowed under the standards in effect when they acquired the property on October 17, 1977.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, do not allow the claimants' desired division or development of the subject property. However, the claim does not establish whether or the extent to which the claimants' desired use of the subject property complies with the standards for land divisions and development under the requirements of Goal 3 and ORS 215 in effect when the claimants acquired the subject property on October 17, 1977.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. There may be other laws that currently apply to the claimants' use of the subject property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of 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 $8,450,340 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 Robert and Beverly Jenkins who acquired the subject property on October 17, 1977. 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 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 subject property is a reduction of $8,450,340.

Without an appraisal or other documentation and without verification of 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, 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 subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

4. Exemptions Under ORS 197.352(3)

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

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Jackson County has implemented through its current EFU zone. With the exception of provisions of Goal 3 and ORS 215 in effect when the claimants acquired the subject property on October 17, 1977, these land use regulations were enacted or adopted after the claimants acquired the 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 3 and ORS 215 in effect in 1977, the statutory, goal and rule restrictions on division and development of the claimants' property were not in effect when the claimants acquired it, and therefore, these laws are not exempt under ORS 197.352(3)(E). Provisions of Goal 3 and ORS 215 in effect when the claimants acquired the subject property in 1977 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimants acquired the subject property are 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.[11] In some cases, it will not be possible to know which laws apply to

[11] Laws administered by other state agencies that are not identified in this claim may come under this exemption, including but not limited to, laws administered by the Department of Geology and Mineral Industries, laws related to access, laws relating to removal or fill of material from waters of the state and laws relating to water quality or threatened or endangered species. This claim does not seek a waiver of any laws enforced by these agencies, and to the extent they apply to the claimants' desired use, nothing in the department's action on this claim affects these laws.

a use of property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in 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 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 $8,450,340. 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 Robert and Beverly Jenkins to use the subject property for a use permitted at the time they acquired the property on October 17, 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 Robert and Beverly Jenkins' partition of the 1,217.32-acre subject property into one 17-acre parcel for quarry operations and sixty 20-acre parcels and to their development of a dwelling on each resulting 20-acre parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after October 17, 1977. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on October 17, 1977.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the property for the use described in this report, subject to the standards in effect on October 17, 1977. On that date, the property was subject to applicable provisions of Goal 3 and ORS 215 then in effect.

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

4. Any use of the 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.

6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on September 27, 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. Comments received have been taken into account by the department in the issuance of this final report.