Oregon
Tina Kotek, Governor

Department of Land Conservation and Development
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Final Order and Authorization to Use Property

In Response To:	Claim for just compensation under Oregon Revised Statutes 195.300 to 195.336 (Measure 49)
State Claim Number:	49-25-0001
Claimants:	Karen and John Barnum 19700 J W Brown Rd Bend, OR 97703
Claim Property:	Township 16 south, Range 12 east, Section 18, Tax Lot 800, Deschutes County
Primary Contact or Agent:	Lisa Andrach Fitch & Neary PC 210 SW 5th St, #2 Redmond, OR 97756
Decision:	Authorization to Use Property Without Applying Certain Land Use Regulations

The claimants, Karen and John Barnum, filed a claim with the state under Oregon Revised Statutes (ORS) 195.300 through 195.336 (also known as Measure 49) on May 5, 2025, for property at 19745 J W Brown Road, near Bend, in Deschutes County.

The Department of Land Conservation and Development (DLCD or department) reviewed the claim and issues this Final Order and Authorization to Use Property in response to the claim.

I. ANALYSIS OF CLAIM

To qualify for just compensation under ORS 195.300 through 195.336, the claim must meet each of the following requirements.

1. The Claimant Is an Owner of the Property

ORS 195.310 requires that the claimant be an owner of the property. ORS 195.300(18) defines "[o]wner" as:

> "(a) The owner of fee title to the property as shown in the deed records of the county where the property is located;
> "(b) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or
> "(c) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner."

Findings of Fact and Conclusions:

According to a memorandum of contract sale submitted by the claimants, Karen Barnum and John Barnum are the purchasers under a recorded land sale contract in force for the property as shown in the Deschutes County deed records and, therefore, are owners of the property under ORS 195.300.

Deschutes County has confirmed that the claimants are the current owners of the property.

2. All Owners of the Property Have Consented in Writing to the Claim

ORS 195.312 requires that all owners of the property must consent to the claim in writing.

Findings of Fact and Conclusions:

There is one non-claimant owner of the property who has submitted consent to the claim in writing; therefore, all owners of the property have consented to the claim in writing.

3. One or More New Land Use Regulations Restrict the Residential Use of the Property

ORS 195.305 states that just compensation may be due "if a public entity enacts one or more land use regulations that restrict the residential use of private real property."

Findings of Fact and Conclusions:

The property is currently zoned Exclusive Farm Use Tumalo/Redmond/Bend Subzone (EFUTRB) by Deschutes County, in accordance with ORS chapter 215 and Oregon Administrative Rule (OAR) 660, division 33, because the property is "agricultural land" under Statewide Planning Goal 3. Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a farm zone, and regulate the establishment of new and replacement dwellings on new or existing lots or parcels.

The claim property consists of 39.38 acres. Therefore, state land use regulations prohibit the claimants from establishing a new dwelling on the claim property.

ORS 215.291 (2023), as effective January 1, 2024, allows replacement of a lawfully established dwelling subject to several specific requirements. ORS 215.291(1)(b)(B) (2023) requires that the dwelling to be replaced must have been:

> "assessed as a dwelling for purposes of ad valorem taxation prior to the destruction or demolition and since the later of:
> "(i) Five years before the date of the destruction or demolition; or
> "(ii) The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment[.]"

The mobile home was demolished in 2021, thus five years before demolition is 2016. Deschutes County tax records show that the mobile home was assessed as a dwelling for the 2020 tax year. Therefore, ORS 215.291(1)(b)(B) does not prohibit the claimants from replacing a dwelling on the claim property.

ORS 215.291(5) (2023), as effective January 1, 2024, requires that an application for a replacement dwelling must be filed within three years following the date that the dwelling last possessed all the features listed under subsection (1)(a).

The claimants removed an existing mobile home in 2021. The claimants could have filed an application for a replacement dwelling within three years of removal, in 2024. The claimants did not file their replacement dwelling application within three years following the date that they removed the mobile home. Therefore, a state land use regulation prohibits the claimants from filing an application for a replacement dwelling on the claim property.

4. Claimant Acquired the Property Prior to the New Land Use Regulation

ORS 195.305(3) states that just compensation is not required for "land use regulations that were enacted prior to the claimant's acquisition date."

ORS 195.328 states that "a claimant's acquisition date is the date the claimant became the owner of the property as shown in the deed records of the county in which the property is located. If there is more than one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates."

Findings of Fact and Conclusions

Deschutes County deed records indicate that the claimants acquired the property on October 11, 2013. This claim is based on ORS 215.291, as amended by House Bill 2192 from the 2023 regular session of the Oregon Legislative Assembly (2023 Oregon

Laws, chapter 301, section 3). The bill took effect January 1, 2024; therefore, the claimants acquired the property prior to the new land use regulation.

5. Residential Use was Lawfully Permitted Prior to the New Land Use Regulation

ORS 195.305(1) states that an owner is entitled to just compensation "[i]f a public entity enacts one or more land use regulations that restrict the residential use of private real property * * * and that reduce the fair market value of the property." A land use regulation restricts the residential use if and only if the use was lawfully permitted before the public entity enacted the regulation.

Findings of Fact and Conclusions

Prior to January 1, 2024, the effective date of House Bill 2192 (2023), the claim property was subject to the requirements in Deschutes County's zoning ordinance for Exclusive Farm Use Tumalo/Redmond/Bend Subzone (EFUTRB). At that time, the owner could have applied to replace a lawfully established dwelling without any restrictions on when an application could be filed. The county could have approved the replacement dwelling if the county determined that the dwelling to be replaced met the structural requirements in ORS 215.291(1)(a)(A)-(D) (2021):

> "(a) The dwelling to be altered, restored or replaced has, or formerly had:
>
> "(A) Intact exterior walls and roof structure;
>
> "(B) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
>
> "(C) Interior wiring for interior lights; and
>
> "(D) A heating system[.]"

According to Deschutes County building permit records, in 1979, a mobile home was placed on the property. The Deschutes County sanitarian approved the subsurface on-site sewage disposal system on September 5. The Deschutes County building inspector approved the electrical connection on September 18. The building inspector approved the final inspection for a residential manufactured structure on September 21. Therefore, the dwelling to be replaced formerly had the required elements.

In addition, ORS 215.291(1)(b)(A) (2021) required that a lawfully established dwelling may be replaced only if the lawfully established dwelling had been removed, the dwelling's tax lot does not have a lien for delinquent *ad valorem* taxes; and the removal occurred after January 1, 1973. The Deschutes County Assessor's Office stated that taxes have been paid and there is no lien in place. The dwelling was removed in 2021, which is after 1973.

Therefore, the claimants lawfully could have applied for a replacement dwelling prior to the effective date of the new land use regulation (January 1, 2024, the effective date of House Bill 2192 (2023)).

6. The Claim was Filed Within the Time Limit

ORS 195.312(5) requires that a claimant file a claim for compensation under ORS 195.310 for the property with the state within five years after the date the new land use regulation was enacted.

Findings of Fact and Conclusions

This claim is based on House Bill 2192 (2023), which took effect on January 1, 2024. The five-year period to file a claim will expire on January 1, 2029. The claimants filed this claim with the state on May 5, 2025; therefore, the claim is timely, as provided in ORS 195.312(5) and ORS 195.330.

7. Residential Use Is Not Restricted by a Land Use Regulation Described in ORS 195.305(3)

ORS 195.305(3) states that just compensation is not required for land use regulations that were enacted prior to claimant's acquisition date or to land use regulations:

> "(a) That restrict or prohibit activities commonly and historically recognized as public nuisances under common law;
> "(b) That restrict or prohibit activities for the protection of public health and safety;
> "(c) To the extent the land use regulations are required to comply with federal law; or
> "(d) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.
> "(e) That plan and rezone land to an industrial zoning classification for inclusion within an urban growth boundary; or
> "(f) That plan and rezone land within an urban growth boundary to an industrial zoning classification."

Findings of Fact and Conclusions

Based on the documentation submitted by the claimants, it does not appear that residential use is restricted by land use regulations described in ORS 195.305(3).

8. The New Land Use Regulations Caused a Reduction in the Fair Market Value of the Claim Property.

ORS 195.310(1)(d) states that just compensation may be due if "one or more land use regulations * * * has reduced the fair market value of the property." ORS 195.310(2) and (3) set several requirements for analyzing a reduction in fair market value.

a. Claimant Must Provide an Appraisal of Fair Market Value Before and After Enactment of the Land Use Regulation.

ORS 195.310(2) requires that “A claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation and the fair market value of the property one year after the enactment.”

Findings of Fact and Conclusions

The claimants provided an appraisal showing that the fair market value of the claim property was $1,114,000 before enactment, and $635,000 after enactment; therefore, this requirement has been met.

b. The appraisal must be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308.

ORS 195.310(2)(a) requires that “The appraisal must * * * [b]e prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308.”

Findings of Fact and Conclusions

The claimants submitted an appraisal by Marlo T. Dill, ARA, who is an Oregon Certified Residential Appraiser (C000707); therefore, this requirement has been met.

c. The appraisal must comply with Standards of Professional Appraisal Practice.

ORS 195.310(2)(b) requires that “The appraisal must * * * [c]omply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.”

Findings of Fact and Conclusions

The claimants’ appraiser confirmed that the appraisal has been completed in conformance with Uniform Standards of Professional Appraisal Practice (*see* Appraisal at 1); therefore, this requirement has been met.

d. The appraisal must determine the highest and best use of the property.

ORS 195.310(2)(c) requires that “The appraisal must * * * expressly determine the highest and best use of the property at the time the land use regulation was enacted.”

Furthermore, ORS 195.310(3) requires that “relief may not be granted under this section if the highest and best use of the property at the time the land use regulation was enacted was not the use that was restricted by the land use regulation.”

Findings of Fact and Conclusions

The appraisal determined that the highest and best use of the claim property at the time the land use regulations were enacted was “Production agriculture with the right to develop a rural residential homesite.” The claim is for a replacement dwelling for residential use; therefore, this requirement has been met.

II. COMMENTS ON THE NOTICE

The department provided notice of this claim on January 15, 2026, to owners of surrounding properties. The department did not receive any comments. The department also provided notice to the Deschutes County Planning Division. Deschutes County provided factual information about *ad valorem* taxation (property taxes) on the claim property without taking any position on the claim.

III. CONCLUSION

Based on the analysis above, the claimants qualify for just compensation under ORS 195.300 through 195.336.

IV. AUTHORIZATION TO USE PROPERTY

ORS 195.310(6) provides two options in response to a valid claim:

> “(a) Compensate the claimant for the reduction in the fair market value of the property; or
> “(b) Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.”

The department does not have funds to compensate the claimants; therefore, this Final Order authorizes the claimants to use the property without application of House Bill 2192 (2023), as effective January 1, 2024. Specifically, the claimants are authorized to apply for a replacement dwelling on the claim property subject to the following terms:

1. No land divisions are authorized by this final order.

2. The replacement dwelling that the claimants are authorized to apply for by this final order must comply with all applicable standards governing the siting or development of the dwelling except for requirements in House Bill 2192 (2023) that place a time limit on when the applicants may apply for the replacement dwelling. This final order does not waive any land use regulations enacted by entities other than the State of Oregon.

3. This final order does not authorize the establishment of a land division or dwelling in violation of a land use regulation described in ORS 195.305(3) or in violation of any other law that is not a land use regulation as defined by ORS 195.300(14).

4. This final order only authorizes the claimants to apply for a replacement dwelling on the claim property. No additional development is authorized on contiguous property for which no claim was filed.

5. If the claimants transferred ownership interest in the claim property prior to the date of this order, this order is rendered invalid and does not authorize development.

6. When the claimants have lawfully replaced the dwelling as authorized by this order, it will have the legal status of a lawful nonconforming use and may be continued lawfully as provided by ORS 215.130.

7. 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, this 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.

It is hereby ordered that this Final Order is entered by the Director of the Department of Land Conservation and Development as a final order of the Department and of the Land Conservation and Development Commission under ORS 197.300 to ORS 195.336 and OAR 660-041-0000 to 660-041-0160.

Matthew Crall

Matthew Crall,
Planning Services Division Manager
Department of Land Conservation and Development
Dated this 28 day of April 2026.

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 is available to anyone who is an owner (as defined in ORS 195.300) of the claim property that is the subject of this final determination, or a person who timely submitted written evidence or comments to the department concerning this final determination.

2. 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 must be filed in the circuit court in the county in which the claim

property is located. Upon motion of any party to the proceedings, the proceedings may be transferred to any other county with jurisdiction under ORS 183.484 in the manner provided by law for change of venue.

3. Judicial review of this final determination is limited to the evidence in the record of the department at the time of its final determination. Copies of the documents that comprise the record are available for review at the department's office at 635 Capitol St. NE, Suite 150, Salem, OR 97301-2540. Judicial review is only available for issues that were raised before the department with sufficient specificity to afford the department an opportunity to respond.