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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

BOB VANDERZANDEN and CRYSTAL  
VANDERZANDEN,

Petitioners,

v.

LAND CONSERVATION AND  
DEVELOPMENT COMMISSION; THE  
DEPARTMENT OF LAND  
CONSERVATION AND DEVELOPMENT,  
an agency of the state of Oregon; and THE  
DEPARTMENT OF ADMINISTRATIVE  
SERVICES, an agency of the state of Oregon,

Respondents.

Case No. 05C19565 (CONSOLIDATED CASES)

Honorable Don A. Dickey

RESPONDENTS' REPLY MEMORANDUM IN  
OPPOSITION TO MOTIONS FOR SUMMARY  
JUDGMENT AND IN SUPPORT OF CROSS-  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT

HOOD RIVER VALLEY RESIDENTS  
COMMITTEE, an Oregon non-profit  
corporation, LARRY and SARA MARTIN,  
individually, and ERIC and TAMIKO  
RUHLEN, individually,

Petitioners,

v.

STATE OF OREGON, by and through the  
DEPARTMENT OF ADMINISTRATIVE  
SERVICES and the DEPARTMENT OF  
LAND CONSERVATION AND  
DEVELOPMENT,

Respondent.

Case No. 06C-17267

Honorable Don A. Dickey

1  
2 JOHN MESSER, BETSY MESSER,  
DOUGLAS FAST and MARTHA FAST,

3 Petitioners,

4 v.

5 LAND CONSERVATION AND  
6 DEVELOPMENT COMMISSION; THE  
7 DEPARTMENT OF LAND  
8 CONSERVATION AND DEVELOPMENT,  
an agency of the State of Oregon; and THE  
9 DEPARTMENT OF ADMINISTRATIVE  
SERVICES, an agency of the State of Oregon,

Respondents.

Case No. 06C18036

Honorable Joseph C. Guimond

### 10 INTRODUCTION

11 Petitioners' interpretation of Measure 37 is fundamentally flawed in at least 2 respects.

12 First, petitioners contend that the measure does not give state agencies any authority to "not  
13 apply" state statutes. That contention is wrong because (1) the text of section 10 expresses the  
14 peoples' intent to give state agencies that authority; (2) the context and history of Measure 37  
15 confirms that intent; and (3) a contrary interpretation would give the State, as a practical matter,  
16 no choice but to leave state statutes in effect, thereby eliminating the option to "waive" those  
17 statutes in lieu of paying compensation.

18 Second, petitioners argue that "waiver" relief under the measure must be crafted to fit the  
19 amount of compensation that would be due *if* the State elected to pay just compensation. But the  
20 text of the measure plainly allows the State to make the threshold determination that "waiver"  
21 relief is available as long as the land use regulations result in *some* reduction in value; there is no  
22 requirement that the State quantify the precise amount of that reduction in determining whether a  
23 claimant qualifies for "waiver" relief. And the measure expressly allows the State to make that  
24 determination based on either the *enforcement or enactment* of the land use regulation, not just  
25 on the *enactment* of a restricting regulation, as petitioners suggest.



1 not include state agencies. They argue that the State cannot insert words to expand that  
2 provision. The State does not disagree. Rather, the State’s point is that it is *section 10* that  
3 authorizes state agencies to not apply state statutes.<sup>1</sup> The Vanderzanden petitioners’ contention  
4 that section 8 “creates” the waiver option ignores that section 10 *also* creates a waiver option,  
5 and so provides for state agencies. Petitioners read into section 8 a limitation on section 10 that  
6 does not exist.

7 Petitioner Hood River Valley Residents Committee (HRVRC) attempts to counter the  
8 state’s textual argument about the meaning of section 8 by noting that ORS 197.352(9) excepts  
9 section 8 decisions by “governing bodies” from the category of “land use decisions” appealable  
10 to the Land Use Board of Appeals. Thus, HRVRC argues, the exclusion of state agencies from  
11 the “governing bodies” to which section 8 applies results in state agency decisions, unlike local-  
12 government decisions, being subject to appeal to the Oregon Land Use Board of Appeals  
13 (LUBA). HRVRC concludes that this result can be avoided only by interpreting section 8  
14 “governing bodies” to include state agencies. That argument fails, because state agency  
15 decisions are already excluded – independently of Measure 37 – from the category of “land use  
16 decisions” appealable to LUBA. That is because the definition of “land use decision” in ORS  
17 197.015 already excludes decisions of LCDC and DLCD from the statutory definition of “land  
18 use decisions.”<sup>2</sup> Accordingly, the text of section 9 is not inconsistent with the State’s reading of  
19 section 8.

20 Petitioner HRVRC responds to the State’s argument that section 10 authorizes state  
21 agencies to waive state statutes by contending that section 10’s reference to “state agencies” only  
22 provides state agencies with authority to “not apply” the land use regulations that state agencies

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23 <sup>1</sup> The State has also suggested that the reference in section 10 to section 6 is a typographical error  
24 that should be read to mean section 8. However, this suggestion is not necessary to the State’s  
argument here.

25 <sup>2</sup> The term “land use decision” is defined in ORS 197.015(11)(a)(B) with regard to state agencies  
26 as : “A final decision or determinations of a state agency other than [LCDC] with respect to  
which the agency is required to apply the [statewide land use planning goals]...”

1 enact, which are goals and rules. There are at least two flaws in this argument. First, if the  
2 governmental entities listed in section 10 were identical to the “governing bodies” referred to in  
3 section 8, there would be no reason for sections 8 and 10 to use different terms.<sup>3</sup> Second,  
4 petitioners’ argument ignores the context of the measure as a whole. If state agencies could  
5 waive goals and rules but not waive statutes, claimants would not obtain the relief they are  
6 seeking – because statutes restricting the same use would still apply despite state agency waiver  
7 of goals and rules. If Measure 37 stated plainly that state agencies could only waive goals and  
8 rules, that would be one thing. But it does not so state. Reading sections 8 and 10 in context, and  
9 in light of the legislative history, demonstrates that state agencies have authority to “not apply”  
10 state statutes.

11 **II. That a waiver does not run with the land until the use authorized by the waiver**  
12 **vests does not invalidate the state’s determination of claim validity.**

13 The parties agree that waivers are not transferable to a subsequent owner where the use  
14 authorized by the waiver has not vested. Petitioners are wrong, however, in contending that the  
15 State erroneously failed to take this limitation on transferability of waiver relief into account in  
16 determining the validity of the claims at issue here.

17 First, petitioners’ theory is based on a flawed assumption: that calculation of reduction in  
18 value resulting from enforcement of the regulation should take account of the effect of a waiver  
19 at all. In determining the validity of a claim, government is not required to consider the fair  
20 market value of the property as affected by the *waiver*; rather the State considers the fair market  
21 value of the property as affected by *the regulation*. Petitioners’ argument assumes that the State  
22 evaluates claims based on the future value of waivers. That is not the case. The threshold  
23 determination about valuation is the present effect of enactment or enforcement on the fair  
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26 <sup>3</sup> In interpreting the measure, differences in terms should be treated as having significance. See  
*Armatta v. Kitzhaber*, 327 Or 250, 262, 959 P2d 49 (1998).

1 market value of the property. What happens after the claimant obtains relief is a separate  
2 question.

3 Second, as outlined in the State's opening brief, even if the threshold question of  
4 reduction in value were to be considered in light of the effect of the waiver, petitioners have it  
5 wrong. The need to vest the rights granted by a "waiver" may affect the value of the waiver, but  
6 it will not result in the waiver having no value. Fair market value can be determined without  
7 certain knowledge of what will eventually happen to the property and whether the owner will  
8 actually vest the use. The fair market value is nevertheless affected by the potential that the use  
9 will vest and determination of fair market value should take that potential into account.

10 Underlying petitioners' theory is the following incongruous reasoning: because relief  
11 cannot be transferred, it therefore has no market value, so relief could never be authorized.  
12 Consider as an example a property owner who lost the right to partition a ten-acre parcel when it  
13 was zoned EFU. Under petitioners' theory, a waiver allowing the partition could never be  
14 authorized because the right to divide the property pursuant to a waiver is personal to the owner  
15 and thus the regulation has no effect on fair market value. That is not the result the people  
16 intended. Instead, the people intended the state to consider how enactment or the enforcement of  
17 a land use regulation prohibiting partition reduces the property's fair market value, and to  
18 provide relief accordingly. That the relief is not automatically transferable does not invalidate the  
19 State's action in authorizing the relief.

20 **III. The State's method of determining whether a claim is valid is consistent with**  
21 **Measure 37.**

22 With respect both to petitioners' arguments about valuation methodology and petitioners'  
23 theory that the state must provide "proportional" waiver relief (Section IV below), the parties  
24 fundamentally disagree about how the Measure 37 process works. Petitioners strain to fit every  
25 aspect of the measure into their imported idea of compensation. The State contends that under  
26 the measure, compensation performs a distinct function as an alternative to non-monetary relief.

1 Petitioners argue that the measure is governed by the constitutional prohibition on “taking”  
2 property without just compensation, while the State contends that the measure is a separate,  
3 independent law.

4 With respect to the State’s valuation methodology, the parties’ disagree on two essential  
5 points: (1), whether the State is required to determine the precise amount of just compensation  
6 that it would pay if, hypothetically, it chose to do so; and (2) whether the State must determine  
7 reduction in value based solely on petitioners’ view of how *enactment* of the regulation caused  
8 reduction in value, or whether the State is entitled to base that determination on reduction caused  
9 by either the regulation’s *enforcement or enactment*.

10 **A. In making the threshold determination whether a claim is valid, the state is**  
11 **not required to determine the precise amount of compensation that would be**  
12 **due in the hypothetical event that the state chose to pay compensation.**

13 Measure 37 creates a two-part process by which a government first assesses whether a  
14 landowner’s claim is valid and – only if the claim is valid – then determines what relief to grant.  
15 Thus, a claimant must first establish a right to compensation by demonstrating, among other  
16 things, that the regulation complained of “has the effect of reducing the fair market value” of the  
17 claimant’s property. ORS 197.352(1).<sup>4</sup> Once the claimant has made that showing, government  
18 has a choice whether to provide “just compensation” or to provide non-monetary relief in the  
19 form of a “waiver” of the relevant regulation. If the government chooses to “not apply” the land  
20 use regulation, it determines the appropriate scope of waiver by looking to the statutory  
21 authorization for that relief: “to allow the owner to use the property for a use permitted at the  
22 time the owner acquired the property.” ORS 197.352(8). Similarly, if the government chooses  
23 to pay monetary compensation, it calculates the “just compensation” due by the method

24 <sup>4</sup> Section 2 provides significant context in determining whether there has been a reduction in fair  
25 market value: “Just compensation shall be equal to the reduction in the fair market value of the  
26 affected property interest resulting from enactment or enforcement of the land use regulation as  
of the date the owner makes written demand for compensation under this section.” ORS  
197.352(2).

1 described in the statute. Thus, only if the government elects the monetary form of relief must it  
2 calculate the precise amount by which the land use regulation has reduced the property's fair  
3 market value.

4 Petitioners read into the statute an unwarranted connection between the two alternative  
5 forms of relief. Petitioners contend that government must determine exactly how much  
6 compensation is due, even if it does not intend to pay compensation, and then must tailor its  
7 waiver relief to the hypothetical amount of compensation in order to determine the kind of  
8 "waiver" to provide. Under this theory, any and all relief is shaped by the precise amount of  
9 compensation that would hypothetically be due if government chose the compensation option.

10 The statutory text does not support petitioners' contention that the State must grant a  
11 waiver that is equal in value to the just compensation that the State would have paid the  
12 landowner if it had elected that form of relief. And, beyond trying to place more weight on the  
13 words "in lieu of" than they can bear, petitioners do not base their argument on the statute itself.  
14 Petitioners' remaining arguments are policy arguments, characterizing the State's methodology  
15 as a casual and unthinking shortcut that is driven by resource concerns. It is true that the State  
16 does not expend unnecessary resources on precise appraisals, detailed market studies and  
17 calculations on every claim, but this choice is neither casual nor unthinking. In fact, the State's  
18 methodology is tailored to determine efficiently the answer to the precise question that the statute  
19 first requires the State to answer: whether the regulation complained of "has the effect of  
20 reducing the fair market value" of the claimant's property. This threshold determination is not  
21 unlike the initial determination of liability in a tort case; in such cases the parties often engage in  
22 a bifurcated proceeding by which they do not determine the precise amount of damages unless  
23 and until there is a threshold determination of liability.

24 Petitioner HRVRC suggests that the State is required to determine the precise measure of  
25 compensation because otherwise the State may on occasion provide waiver relief when there is  
26

1 only minimal loss in value.<sup>5</sup> Petitioner Vanderzanden suggests that the precise amount of  
2 compensation must always be quantified, because otherwise, the State may never pay  
3 compensation and instead will waive land use regulations in every case.<sup>6</sup> That concern may  
4 represent a policy disagreement with a governmental decision to provide waiver relief rather than  
5 compensation, or it may represent a policy disagreement with the legislature’s decision not to  
6 appropriate funds for Measure 37 compensation. But that concern does not render the State’s  
7 orders unlawful under Measure 37. Indeed, nothing in Measure 37 requires that government ever  
8 pay compensation rather than choose to waive the relevant regulations. Accordingly, the State is  
9 not required to determine more than it has determined in these cases: that enforcement of the  
10 regulation results in *some* reduction in fair market value.

11 **B. The State applied the correct legal analysis in answering the threshold**  
12 **question of whether there has been *some* reduction in value.**

13 Petitioners have also failed to show that the method the State used to determine the  
14 validity of the claim --which is based on *enforcement* of the regulation -- is invalid, and that  
15 petitioners’ method, which is based on the effect of *enactment* of the regulation, is required.  
16 Significantly, petitioners do not challenge the means by which the State measures reduction in  
17 value based on enforcement. Rather, the basis of their argument is that the State relies at all on  
18 the effect of enforcement – rather than enactment.<sup>7</sup>

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21 <sup>5</sup> Hood River Valley Residents’ Committee (HRVRC) Reply p. 11.

22 <sup>6</sup> Vanderzanden Reply pp. 10-13.

23 <sup>7</sup> Petitioners also complain that the State’s orders provided that the regulations complained of  
24 were “more likely than not” to have reduced the value of the property. However, that phrase in  
25 the orders refers to the burden of proof applicable in state administrative decisions ; it does not  
26 refer to the determination of valuation. *See, e.g. Gallant v. Board of Medical Examiners*, 159 Or  
175, 974 P2d 814 (1999)(applying preponderance of the evidence standard in administrative  
proceeding). In other words, the orders could just as well have said simply that DLCD found  
“that there was a reduction in fair market value.” That DLCD made that finding based on a  
certain quantum of proof does not change the finding itself.

1           The State explained in its opening brief that DLCDC determined that these claimants had  
2 valid Measure 37 claims by determining that continuing enforcement of existing land use  
3 regulations had the effect of reducing the property’s fair market value by some amount. DLCDC  
4 concluded that the fair market value of the claimant’s property interest with the state land use  
5 regulations continuing to apply was less than what the fair market value would be if those  
6 regulations were no longer enforced with respect to the claimant’s property or to any other  
7 properties or property interests where DLCDC has determined to not enforce those regulations in  
8 response to Measure 37 claims. Petitioners have not demonstrated how this methodology fails to  
9 comport with the requirements of Measure 37.

10           Petitioner Vanderzanden criticizes the State’s methodology as precluding consideration  
11 of evidence that fair market value has not in fact been reduced.<sup>8</sup> That is not correct, and is a  
12 mischaracterization of the State’s methodology. Nothing in the State’s methodology prevents  
13 opponents of a claim from presenting evidence that the pertinent land use regulations have *not*  
14 reduced the property’s fair market value. Indeed, evidence in a particular case may overcome  
15 the usual presumption that property currently zoned for farm or forest uses would have a greater  
16 fair market value if these laws were not enforced.<sup>9</sup> In all but one of the orders at issue in the  
17 case, no such evidence was presented. Where such evidence has been provided, review of the  
18 conclusion drawn by the state agency will present a question of substantial evidence on the  
19 record, a question not now before the court on these motions.

20           Most significantly, petitioners have not adequately explained why the State is required to  
21 adopt the methodology they propose: to measure reduction in value immediately before and  
22 after the time the regulations were *enacted*. Under ORS 197.352(2) “just compensation” is the

23 \_\_\_\_\_  
24 <sup>8</sup> Vanderzanden Reply p. 13.

25 <sup>9</sup> Lane Shetterly’s affidavit says: “DLCDC...generally assumes – *absent evidence that the*  
26 *assumption may be unwarranted in a particular case* – that the most profitable likely use of  
property zoned for farms or forest use would be residential use.” Shetterly Affidavit p. 2, ¶ 3  
(emphasis added).

1 “reduction in the fair market value of the affected property interest resulting from *enactment or*  
2 *enforcement* of the land use regulation.” (Emphasis added). Thus, the measure provides that a  
3 claim is valid when *enforcement* of a land use regulation has the effect of reducing fair market  
4 value, and, as the state has explained, enforcement of the state land use laws at issue in these  
5 orders is ongoing. Accordingly, the State’s method is consistent with the statutory text.

6 Petitioners’ theory focuses solely on “enactment” and reads the term “enforce” out of the  
7 statute. Instead of focusing on the text, petitioners rely on case law regarding constitutional  
8 “takings” and eminent domain. But those authorities cannot override the express definition of  
9 “just compensation” in the measure itself. Petitioners also suggest that the State’s method  
10 equates future gain in value with current loss because there is no such thing as current loss of  
11 fair market value resulting from past regulation.<sup>10</sup> But that cannot demonstrate that it is legally  
12 erroneous to evaluate claims by considering reduction in value caused by ongoing  
13 “enforcement.” Indeed, suggesting that “enforcement” could never reduce value renders the term  
14 “enforce” meaningless. That is inconsistent with the text of the measure.<sup>11</sup> The State’s  
15 methodology gives effect to the statutory text.

16 **IV. The State is not required to limit the scope of waiver relief based on the amount of**  
17 **compensation that would otherwise be paid.**

18 With respect to waiver relief, petitioners and the State disagree both about the meaning of  
19 ORS 197.352 and the nature of relief that the state’s orders actually provide. As the State has  
20 explained, the measure provides two alternate forms of relief: government can pay “just  
21 compensation” as defined in ORS 197.352(2), or “in lieu of payment of just compensation”  
22 government can “modify, remove, or not to [sic] apply” the land use regulation. Petitioners

23 <sup>10</sup> *E.g.*, Vanderzanden Reply p. 10.

24 <sup>11</sup> Petitioner Vanderzandens also reference their opening brief at p. 16-18. There they insist that  
25 it is the “facial effect” of the regulation that triggers the duty to compensate – but, strangely, the  
26 argument is based on the view that “enforces” means that a regulation “continues to apply.” The  
state agrees with that view of the term “enforce,” which does not in any way support petitioners’  
theory that only enactment of a regulation can give rise to a claim for relief.

1 attempt to force the second alternative, the non-monetary or “waiver” alternative, to fit into the  
2 mold of the first “just compensation” alternative, when nothing in the text, context or history of  
3 the statute requires or even authorizes such a result.<sup>12</sup>

4 Without textual support, petitioners assert that the “overarching goal” and “primary  
5 requirement” of ORS 197.352 is compensation, and describe constitutional “just compensation”  
6 jurisprudence and purposes of land use laws.<sup>13</sup> From this they reason that the alternate form of  
7 relief provided in the measure is another means to provide compensation. They conclude that  
8 waiver relief must be equivalent to compensation. But there is no support in the text of the  
9 measure for that reading. Rather, as noted above, “just compensation” is specifically defined in  
10 the text of the measure itself, not by reference to other jurisprudence. And what the text of the  
11 measure also demonstrates is that government has a choice: if government wants a regulation to  
12 remain in effect, it pays just compensation as defined in the measure; otherwise it can choose not  
13 to apply the regulation to the claimant’s use of the property. Petitioners’ view that the concept of  
14 compensation governs the nature of waiver relief is wrong.

15 Petitioners also base their argument on the waiver provisions in the measure, sections 8  
16 and 10. The State agrees with some aspects of petitioners’ reading of the text, but not with the  
17 conclusion they draw from it. Petitioners point out that the measure provides two forms of non-  
18 monetary relief, depending on government’s response to the claim. Pursuant to ORS 197.352(8)  
19 and (10), in lieu of compensation, government can “not apply” the regulation “to allow the  
20 owner to use the property for *a use* permitted at the time the owner acquired the property.” ORS  
21 197.352(8) (emphasis added). If government does not waive the regulation, and the regulation  
22 still applies after 180 days, the claimant has a cause of action for compensation in circuit court

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23 <sup>12</sup> Only the brief of petitioner HRVRC discusses this issue; the other petitioners adopt HRVRC’s  
24 brief as to this issue.

25 <sup>13</sup> HRVRC Reply p. 13. Petitioners cite to Voters Pamphlet statements focusing on the desire for  
26 compensation (HRVRC Reply p. 19-20). However, as cited in the State’s opening brief  
(pp. 30-31), other statements in the Voters Pamphlet emphasize the desire to use the property in a  
certain way.

1 under section 6. The measure further provides a penalty if compensation is not paid within two  
2 years. In that event, “the owner shall be allowed to use the property as permitted at the time the  
3 owner acquired the property.” ORS 197.352(10).

4 According to petitioners, the waiver relief must differ from the section 10 “penalty”: it is  
5 not logical to provide the same relief to a claimant if the government acts to provide relief within  
6 180 days or if government waits two years. Therefore, petitioners conclude, if the State acts on a  
7 claim within 180 days, the State must be required to provide lesser relief: petitioners’ version of  
8 “proportionate” relief.

9 The State agrees that the measure provides for different relief in these two circumstances,  
10 but parts with petitioners as to the form those two kinds of relief may take. The first form of  
11 relief – that provided within 180 days – relates to *a specific desired use* that the claimant desires  
12 and asserts has been restricted by the regulation. The relevant text provides that government will  
13 not apply the regulation *to allow a use*. ORS 197.352(8), (10).<sup>14</sup> After two years, however, the  
14 owner would be provided the second form of relief: the owner may *use the property as permitted*  
15 *when the owner acquired the property*. ORS 197.352(10).<sup>15</sup> That relief may authorize multiple  
16 uses – whatever use was permitted when the owner acquired the property, rather than *a use*—that  
17 is, a specific use—as authorized when government acts within 180 days.

18 Petitioners suggest that in their orders the state agencies have already provided the  
19 second form of relief, which petitioners refer to as “blanket waivers.” Petitioners are wrong. The  
20 State has in fact only provided the first form of relief, which relates to a specific desired use.  
21 Respondent agencies have not provided greater relief than authorized.

22

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23 <sup>14</sup> “...in lieu of payment of just compensation under this section, the governing body responsible  
24 for enacting the land use regulation may modify, remove or not to apply the land use regulation  
or land use regulations to allow the owner to use the property *for a use permitted* at the time the  
owner acquired the property.” (emphasis added).

25 <sup>15</sup> “If a claim has not been paid within two years from the date on which it accrues, the owner  
26 shall be allowed *to use the property as permitted at the time* the owner acquired the property.”  
(emphasis added).

1 **V. State laws regulating the partition and subdivision of land are subject to relief**  
2 **under Measure 37.**

3 In its opening brief, the State explained that state laws regulating subdivision of land are  
4 “land use regulations” subject to Measure 37. State laws that regulate land divisions fall within a  
5 specific definition of “land use regulations” in Measure 37: “any statute regulating the use of  
6 land or any interest therein.” ORS 197.352(11)(B)(i). There is no similar category that covers all  
7 local ordinances that regulate the use of land. Instead local ordinances regulating land divisions  
8 are specifically referenced in the definition of “land use regulation”, ORS 197.352(11)(B)(iii).  
9 That specific reference proves nothing about state statutes because they already are included  
10 within the broader definition covering state laws. Petitioners raise no argument to demonstrate  
11 that partition and subdivision statutes fall outside the clear definition in ORS 197.352(11)(B)(i).

12 **CONCLUSION**


13 The parties agreed to address five common issues of law with respect to the orders in  
14 these consolidated cases. The State has demonstrated that its orders are consistent with the law in  
15 all respects challenged by petitioners. First, the people intended that state agencies would have  
16 authority to provide waiver relief as to state statutes. Second, the fact that waiver relief is not  
17 automatically transferable to subsequent owners does not invalidate the State’s determination of  
18 claim validity. Third, in making the threshold determination whether a claim is valid, the State is  
19 not required to determine the precise amount of compensation that would be owing in the  
20 hypothetical event the State elected to pay compensation, but is entitled to consider whether the  
21 regulation results in some reduction in value. And in making that determination the State  
22 correctly considered whether enforcement of the regulation -- rather than enactment -- results in  
23 reduction in value. The State is not required to provide waiver relief that matches the  
24 compensation that would be due. Finally, state laws regulating the partition and subdivision of  
25  
26

1 land are "land use regulations" giving rise to relief under ORS 197.352. The State is entitled to  
2 summary judgment on these issues of law.

3 DATED this 6<sup>th</sup> day of December, 2006.

4 Respectfully submitted,

5 HARDY MYERS  
6 Attorney General

7 

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16 Of Attorneys for State Defendants  
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1 **CERTIFICATE OF SERVICE**

2 I certify that on December 6<sup>th</sup>, 2006, I served the foregoing RESPONDENTS' REPLY  
3 MEMORANDUM IN OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT AND IN  
4 SUPPORT OF CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT upon the parties  
5 hereto by the method indicated below, and addressed to the following:

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