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

5 STANLEY L. SULLIVAN and HELEN E.
6 SULLIVAN,

7 Plaintiffs,

8 v.

9 STATE OF OREGON, DEPARTMENT OF
10 LAND CONSDERVATION AND
11 DEVELOPMENT,

12 Defendant.

Case No. 06C20159

Honorable Mary Mertens James

DEFENDANT'S MOTION TO DISMISS FOR
LACK OF JURISDICTION


13 Pursuant to ORCP 21A(1), defendant State of Oregon, Department of Land Conservation
14 and Development, moves to dismiss the case on the ground that the single claim for relief
15 remaining in the case – plaintiffs' request for a declaratory judgment – is moot because the State
16 has issued an Amended Final Order granting plaintiffs all the relief they seek in that claim.
17 Consequently, this Court lacks jurisdiction to enter a judgment in plaintiffs' favor.

18 This motion is based on the record and file herein, the State's memorandum in support of
19 its motion to dismiss for lack of jurisdiction, and the declaration of Darsee Staley filed with that
20 memorandum.

21 DATED this 11 day of July, 2007.

22 Respectfully submitted,

23 HARDY MYERS
24 Attorney General

25 
26 ERIKA L. HADLOCK #91297
Sr. Assistant Attorney General
Tel (503) 947-4700, Fax (503) 947-4792
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Of Attorneys for Defendant

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Honorable Mary Mertens James

MEMORANDUM IN SUPPORT OF STATE'S
MOTION TO DISMISS FOR LACK OF
JURISDICTION

14 **INTRODUCTION**

15 On July 9, 2007, this Court heard argument on the parties' cross-motions for summary
16 judgment. At that hearing, plaintiffs withdrew their claim for monetary relief under ORS
17 197.352(6), leaving only a single claim in their complaint: a declaratory-judgment claim seeking
18 an order requiring the State to grant Measure 37 relief "waiving" certain land use regulations
19 enacted since they acquired the property in July 1969. The State's original Final Order had
20 approved plaintiffs' Measure 37 claim, but had granted a "waiver" only of post-1976 regulations.

21 The State opposed plaintiffs' motion for summary judgment and filed its own summary-
22 judgment motion on the basis that it was in the process of amending the Final Order and Staff
23 Report it originally issued on plaintiffs' Measure 37 claim. The State attached a copy of the
24 Proposed Amended Staff Report to its summary-judgment motion and informed the court that it
25 anticipated that an Amended Final Order would issue before the July 9 hearing.

26 Unfortunately, the Amended Final Order did not issue by July 9. The State argued at that
afternoon's hearing, however, that the Court should not grant plaintiffs' request for a declaratory

1 judgment because their claim would be moot as soon as DLCD and DAS issued the Amended
2 Final Order, which would grant the requested July 1969 waiver. Nonetheless, this court orally
3 ruled in favor of plaintiffs, granting them summary judgment on their declaratory-judgment
4 claim on the ground that the claim was not moot because no Amended Final Order had yet
5 issued. The Court ordered plaintiffs' counsel to prepare an appropriate order and limited
6 judgment. No judgment has yet been entered.

7 On July 10, 2007, DAS and DLCD issued the Amended Final Order on plaintiffs'
8 Measure 37 claim. As anticipated, that order gives plaintiffs the relief they seek in their
9 declaratory-judgment claim: a "waiver" of certain land use regulations enacted after they
10 acquired their property in July 1969. The State files this motion to dismiss plaintiffs' complaint
11 on the ground that the sole claim left in the case – the claim for declaratory relief – is moot and
12 this Court lacks jurisdiction to enter judgment on that claim.

13 ARGUMENT

14 As the State explained in its summary-judgment memorandum, it originally found that
15 plaintiffs acquired their property in 1976, approved their Measure 37 claim, and granted them a
16 "waiver" of certain land use regulations enacted after the 1976 acquisition date. (*Record* § 6).
17 After plaintiffs initiated this litigation and responded to the State's discovery request, the State
18 determined that plaintiffs actually had acquired the property in 1969 and had not conveyed it
19 away at any time thereafter. Accordingly, DLCD issued a Proposed Amended Final Staff Report
20 and Recommendation, recommending that plaintiffs' Measure 37 demand be approved with a
21 July 1969 acquisition date, as they had requested. After the comment period passed, DLCD and
22 DAS issued an Amended Final Order approving plaintiffs' Measure 37 demand with a 1969
23 acquisition date, and granting a waiver of certain land use regulations enacted after that date.
24 That Amended Final Order issued on July 10, 2007. (Darsee Staley Declaration, Ex 1).

25 The hearing on the parties' cross-motions for summary judgment occurred one day *before*
26 that Amended Final Order issued, and this Court orally granted plaintiffs' motion for summary

1 judgment on their declaratory-judgment claim, in which they sought a declaration that
2 “plaintiffs’ ownership began in July of 1969, for purposes of making a claim for compensation
3 pursuant to Measure 37” and that “plaintiffs qualify for compensation in all other aspects of
4 Measure 37.” (Complaint, prayer ¶¶ (a), (b)).

5 Because the Amended Final Order gives plaintiffs everything they request in their claim
6 for declaratory relief, that claim is now moot, even though it technically was not moot on July 9,
7 2007, when this Court orally ruled in plaintiffs’ favor. No controversy remains between the
8 parties and nothing is left for this Court to adjudicate. *See Yancy v. Shatzer*, 337 Or 345, 347
9 (the “judicial power” in Oregon “does not include the authority to adjudicate cases in which
10 there is no existing controversy”). Although this Court orally granted plaintiffs summary
11 judgment on their claim for declaratory relief, no written order or judgment on that ruling has
12 been entered, and this Court now lacks jurisdiction to enter a judgment in plaintiffs’ favor.
13 Accordingly, this Court should dismiss plaintiffs’ claim for declaratory relief as moot, deny
14 plaintiffs’ motion for summary judgment on that claim, enter a judgment dismissing plaintiffs’
15 Measure 37 compensation claim, which they voluntarily dismissed at the July 9 hearing, and
16 enter judgment in favor of the State.

17 **CONCLUSION**


18 The Amended Final Order gives plaintiffs everything they are due under Measure 37 and
19 everything they requested in their claim for declaratory relief, which is the only claim remaining
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1 in the case. Accordingly, this Court should dismiss plaintiffs' complaint for lack of jurisdiction
2 and enter judgment for the State.

3 DATED this 11 day of July, 2007.

4 Respectfully submitted,

5 HARDY MYERS
6 Attorney General

7 
8 ERIKA L. HADLOCK #912970
9 Sr. Assistant Attorney General
10 Trial Attorney
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14 Of Attorneys for Defendant
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8 Plaintiffs,

9 v.

10 STATE OF OREGON, DEPARTMENT OF
11 LAND CONSERVATION AND
12 DEVELOPMENT,

Defendant.

Case No. 06C20159

DECLARATION OF DARSEE STALEY IN
SUPPORT OF DEFENDANT'S MOTION TO
DISMISS FOR LACK OF JURISDICTION

13 I, Darsee Staley, do declare and say:

14 I am a Senior Assistant Attorney General at the Oregon Department of Justice, attorneys
15 for Defendant in the above-captioned matter. I make this declaration based on my personal
16 knowledge and in support of the State's Motion to Dismiss for Lack of Jurisdiction, hereby
17 stating that the attached Exhibit is a true and correct copy of the Amended Final Order that
18 issued on July 10, 2007 on Plaintiffs' Measure 37 demand number M122455 (Stanley and Helen
19 Sullivan):

20 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST
21 OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE
22 AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

23 DATED this 11 day of July, 2007.

24
25 
26 DARSEE STALEY
Senior Assistant Attorney General

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) AMENDED FINAL ORDER
COMPENSATION UNDER ORS 197.352) CLAIM NO. M122455
(BALLOT MEASURE 37) OF)
Stanley and Helen Sullivan, CLAIMANTS)

Claimants: Stanley and Helen Sullivan (the Claimants)

Property: Township 08S, Range 01W, Section 30D, Tax lot 1900, Marion 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 amended order is based on the record herein, including the Findings and Conclusions set forth in the Amended 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 Stanley and Helen Sullivan's division of the 22-acre property into seven approximately 3-acre parcels: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. 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 in July 1969.
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 in July 1969.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent.

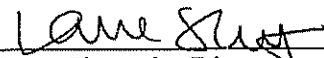
Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

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


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

This Order is entered by the 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 Deputy 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 9th day of July, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:


Janice K. Dean, SSD Administrator
DAS, State Services Division
Dated this 9th day of July, 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 197.352¹, 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."

¹ By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Amended Staff Report and Recommendation**

July 9, 2007

STATE CLAIM NUMBER: M122455

NAMES OF CLAIMANTS: Stanley and Helen Sullivan

MAILING ADDRESS: 7988 Albus Road SE
Aumsville, Oregon 97325

PROPERTY IDENTIFICATION: Township 08S, Range 01W, Section 30D
Tax lot 1900
Marion County

OTHER CONTACT INFORMATION: James D. Vick
698 12th Street SE, Suite 200
Salem, Oregon 97301

DATE RECEIVED BY DAS: September 23, 2005

180-DAY DEADLINE: August 8, 2006¹

I. SUMMARY OF CLAIM

The claimants, Stanley and Helen Sullivan, seek compensation in the amount of \$200,000 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 divide the 22-acre property into seven approximately 3-acre parcels. The subject property is located at 7988 Albus Road SE, near Aumsville, in Marion 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 Stanley and Helen Sullivan's division of the 22-acre property into seven approximately 3-acre parcels: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33. These laws will not

¹ This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

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 in July 1969. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 12, 2005, 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, four 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 September 23, 2005, for processing under OAR 125, division 145. The claim identifies all statutes, rules and other land use regulations subsequent to the data of ownership 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, Stanley and Helen Sullivan, acquired the subject property in July 1969, when they entered into a land sale contract with Chester J. and Betty L. Morehead. A January 4, 2005, plant service report submitted with the claim establishes the claimants’ current ownership of the subject property.

Conclusions

The claimants, Stanley and Helen Sullivan, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of July 1969.

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 22-acre property into seven approximately 3-acre parcels, which is not allowed under current land use regulations.

The claim is based generally on Marion County’s current Special Agriculture (SA) zone and the applicable provisions of state law that require such zoning. The claimants’ property is zoned SA 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 3.² Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned Exclusive Farm Use (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. 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.

² The claimants’ property is “agricultural land” because it contains Natural Resources Conservation Service Class I-IV soils.

The claimants acquired the subject property in July 1969, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

Conclusions

The current zoning requirements and minimum lot size established by Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimants acquired the subject property in 1969 and do not allow the claimants' desired division of the subject property. These laws restrict the use of the subject property relative to the uses allowed when the claimants acquired the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the use that the claimants have identified. There may be other laws that currently apply to the claimants' use of the subject property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use 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 \$200,000 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 Stanley and Helen Sullivan who acquired the subject property in July 1969. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the 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 regulation(s) on the fair market value of the subject property is a reduction of \$200,000.

Without an appraisal or other documentation, 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.

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 Marion County has implemented through its current SA zone. All of 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 none of the general statutory, goal and rule restrictions on division of the claimants' property were in effect when the claimants acquired it in 1969. As a result, these laws are not exempt under ORS 197.352(3)(E).

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

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

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced 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 subject property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$200,000. 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 the claimants' desired use of the 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 Stanley and Helen Sullivan to use the subject property for a use permitted at the time they acquired the property in July 1969.

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 Stanley and Helen Sullivan's division of the 22-acre property into seven approximately 3-acre parcels: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. 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 in July 1969.
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 in July 1969..
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.
4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not

subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

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

VII. COMMENTS ON THE DRAFT STAFF REPORT


The department issued its draft staff report on this claim on July 18, 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.

1 **CERTIFICATE OF SERVICE**

2 I certify that on July 11, 2007, I served the foregoing DEFENDANT'S MOTION TO
3 DISMISS FOR LACK OF JURISDICTION, MEMORANDUM IN SUPPORT OF STATE'S
4 MOTION TO DISMISS, and DECLARATION OF DARSEE STALEY IN SUPPORT OF
5 STATE'S MOTION TO DISMISS FOR LACK OF JURISDICTION upon the parties hereto by
6 the method indicated below, and addressed to the following:

7
8 James D. Vick
9 Attorney at Law
698 12th Street SE, Suite 200
Salem, OR 97301

HAND DELIVERY
 MAIL DELIVERY
 OVERNIGHT MAIL
 TELECOPY (FAX)

10
11
12
13 
14 DARSEE STALEY #87351
15 Senior Assistant Attorney General
16 Trial Attorney
17 Tel (503) 947-4700
18 Fax (503) 947-4792
19 Darsee.Staley@doj.state.or.us
20 Of Attorneys for Defendant
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