Department of Land Conservation and Development
635 Capitol St NE, Suite 150
Salem, OR 97301

CERTIFICATE OF SERVICE

I certify that I served the attached M122509 HILKEY AMENDED FINAL ORDER and AMENDED FINAL STAFF REPORT AND RECOMMENDATIONS on:

(See Attached List)

by mailing a full, true and correct copy in a sealed, first-class postage-prepaid envelope, addressed to the person(s) listed above, and deposited with the United States Postal Service at Salem, Oregon, on the date set forth below.

DATED this 26th day of June, 2007.

Name: Heather Ulaszewicz
Measure 37 Support Specialist

Mark S. Bartholomew
Hornecker, Cowling, Hassen & Heysell, LLP
717 Murhphy Road
Medford, OR 97504

Charles Hilkey
PO Box 881
North San Jaun, CA 95960

Kelly Madding, Development Services Director
Jackson County
10 South Oakdale, Room 100
Medford, OR 97501

Mary Kyle McCurdy, Staff Attorney
1000 Friends of Oregon
534 SW 3rd Avenue, Suite 300
Portland, OR 97204-2597

John Renz, Southern Oregon Field Rep.
DLCD
PO Box 3275
Central Point OR 97502-0011

Pat Wheeler
CIAC
12090 Rolling Hills Road
Monmouth, OR 97361

Ginny Gustafson, AAG
Department of Justice
1162 Court St. NE
Salem, OR 97301-4095

Jim Johnson, Land Use Planning Coordinator
Oregon Dept. of Agriculture
635 Capitol St. NE, Ste 100
Salem, OR 97301-2532

Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2524
Phone: (503) 373-0050
First Floor/Costal Fax: (503) 378-6033
Second Floor/Director's Office: (503) 378-5518
Web Address: http://www.oregon.gov/LCD

June 26, 2007

Charles Hilkey Jr.
PO Box 881
North San Juan, California 95960

Re: Ballot Measure 37 (ORS 197.352) Claim Number M122509

Claimant: Charles Hilkey Jr.

Dear Mr. Hilkey:

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

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

Thank you for your courtesies.

Yours very truly,

LANE SHETTERLY
Director

Enclosure

Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2524
Phone: (503) 373-0050
First Floor/Costal Fax: (503) 378-6033
Second Floor/Director's Office: (503) 378-5518
Web Address: http://www.oregon.gov/LCD

June 26, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M122509

Claimant: Charles Hilkey Jr.

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

This Amended Final Staff Report and Recommendation and the Amended 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 COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Charles Hilkey Jr., CLAIMANT	))))	AMENDED FINAL ORDER CLAIM NO. M122509

Claimant: Charles Hilkey Jr. (the Claimant)

Property: Township 34S, Range 2E, Section 20, Tax lot 4700, Jackson County (the Property)

Claim: The demand for compensation and any supporting information received from the Claimant by the State of Oregon (the Claim).

Claimant 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 Amended 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 Charles Hilkey Jr.'s division of the approximately 240-acre property into approximately 20-acre parcels and to develop a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after June 10, 1980. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on June 10, 1980.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the property for the use described in this report, subject to the standards in effect on June 10, 1980. On that date, the property was subject to applicable provisions of Jackson County's OSR-20 zone, and the applicable provisions of Goal 3, ORS 215 and OAR 660, division 5, then in effect.

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

unless the claimant first obtains 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 claimant 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 claimant to use the subject property, it may be necessary for him 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 claimant 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 claimant.

This Amended Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION AND DEVELOPMENT COMMISSION:

Lane Shetterly, Director
DLCD
Dated this 26th day of June, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 26th day of June, 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
Amended Final Staff Report and Recommendation

June 26, 2007

STATE CLAIM NUMBER:	M122509
NAME OF CLAIMANT:	Charles Hilkey Jr.
MAILING ADDRESS:	PO Box 881 North San Juan, California 95960
PROPERTY IDENTIFICATION:	Township 34S, Range 2E, Section 20 Tax lot 4700 Jackson County
OTHER CONTACT INFORMATION:	Mark Bartholomew 717 Murphy Road Medford, Oregon 97504
DATE RECEIVED BY DAS:	September 28, 2005
180-DAY DEADLINE:	August 13, 2006[1]

I. SUMMARY OF CLAIM

The claimant, Charles Hilkey Jr., seeks compensation in the amount of $1,190,210 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 claimant desires compensation or the right to divide the approximately 240-acre property into approximately 20-acre parcels and to develop a dwelling on each parcel. The subject property is located at 3790 Cobleigh Road, near Butte Falls, in Jackson 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 Charles Hilkey Jr.'s division of the approximately 240-acre property into approximately 20-acre parcels and to his development of a dwelling on each parcel: applicable

[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. Srvcs.*, 340 Or 117 (2006).

provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after June 10, 1980. These laws will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on June 10, 1980. (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, one written comment was received in response to the 10-day notice.

The comment is relevant to whether the claimant is an owner, whether a state law restricts the claimant's use of the subject property, whether the restriction of the claimant's use of the subject property reduces the fair market value of the property and whether the laws that are the basis for the claim are exempt under ORS 197.352(3). The comment has been considered by the department in preparing this report. (See the comment letter 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 28, 2005, for processing under OAR 125, division 145. The claim identifies Jackson County's Exclusive Farm Use (EFU) zone and a number of state laws, rules and statewide planning goals as the basis for the claim.[2] Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

[2] In addition to the Jackson County EFU zone, the claim summarily identifies Goals 3, 4, 5, 11 and 14; ORS 92, 195, 197 and 215; and certain rules under OAR 340, division 96, and 660, divisions 4, 11, 12, and 33. The OAR 340, division 96, rules are administered by the Department of Environmental Quality (DEQ). The claimant's attorney, by an e-mail dated May 11, 2006, withdrew the claim with regard to these rules.

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 claimant, Charles Hilkey Jr., acquired the subject property by contract on April 26, 1977, subject to a life estate reserved by his parents. The claimant's parents, Charles M. and Mae H. Hilkey, acquired the subject property on July 23, 1953, as reflected by a warranty deed included with the claim. A personal representative's deed submitted with the claim indicates that the claimant acquired his present interest in the subject property on June 10, 1980, following his mother's death. The Jackson County Assessor's Office confirms the claimant's current ownership of the subject property.

Conclusions

The claimant, Charles Hilkey Jr., is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C) as of June 10, 1980. The claimant's parents, Charles M. and Mae H. Hilkey, are "family members" as that term is defined by ORS 197.352(11)(A) and acquired the subject property on July 23, 1953.

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 claimant's 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 claimant or a family member acquired the property.

Findings of Fact

The claim indicates that the claimant desires to divide the approximately 240-acre property into approximately 20-acre parcels and to develop a dwelling on each parcel. It indicates the desired use is not allowed under the property's current zoning.[3]

[3] The claimant has summarily cited numerous state land use laws as applicable to this claim, but does not establish how the laws either apply to the claimant's desired use of the subject property or restrict its use with the effect of reducing its fair market value, or are enforced by the Commission or the department. On their face, most of these regulations either do not apply to the claimant's property or do not restrict the claimant's desired use of the property

The claim is based generally on Jackson County's current EFU zone and the applicable provisions of state law that require such zoning. The claimant's property is zoned EFU as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant's 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 the Goal 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 the 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. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

The claimant's family first acquired the subject property in 1953, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1953.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimant's family acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when the claimant's family acquired the property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use 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."

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in a manner that reduces its fair market value or have not been enforced. This report addresses only those regulations that the department finds are applicable to and restrict the claimant's use of the subject property, and have been enforced by the Commission or the department, based on the claimant's asserted desired use.

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

Findings of Fact

The claim includes an estimate of $1,190,210 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on a comparative market analysis.

Conclusions

As explained in Section V.(1) of this report, the claimant is Charles Hilkey Jr. whose family acquired the subject property on July 23, 1953. Under ORS 197.352, the claimant is 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 claimant's family acquired the subject property restrict the claimant's desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of $1,190,210.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations reduce 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 relative to the uses permitted when the claimant's family acquired the property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Jackson County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after the claimant's family acquired the subject property.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimant's family acquired the property in 1953. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimant's family acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

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 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 claimant's 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 $1,190,210. 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 claimant's desired use of the subject property was allowed under the standards in effect when his family 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 Charles Hilkey Jr. to use the subject property for a use permitted at the time he acquired the property on June 10, 1980.

The claimant acquired the subject property on June 10, 1980. At that time, the property was subject to Jackson County's OSR-20 zone. Also, at that time, the statewide planning goals, and Goal 3 in particular, applied directly to the claimant's property.[5] Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.[6] 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

[5] 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).

[6] The claimant's property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the claimant's opportunity to divide the subject property when he acquired it in 1980 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1) 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 June 10, 1980, 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).

No information has been presented in the claim to establish that the claimant's desired division of the subject property into 20-acre parcels complies with the "commercial" standard for farm parcels under Goal 3 or the standards for non-farm parcels under ORS 215.263 (1973 edition), nor is there any information to establish that the claimant's desired development of dwellings on each parcel of the subject property satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1973 edition).

In addition to the applicable provisions of ORS 215 and Goal 3 in effect when the claimant acquired the property, there may be other laws that continue to apply to the claimant's 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 claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use, and depending on when they were enacted or adopted, may continue to apply to the claimant's property. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D) and will continue to apply to the subject property on that basis.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimant has 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 claimant should be aware that the less information he has 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 his use of the subject property.

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 Charles Hilkey Jr.'s division of the approximately 240-acre property into approximately 20-acre parcels and to develop a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after June 10, 1980. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on June 10, 1980.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the property for the use described in this report, subject to the standards in effect on June 10, 1980. On that date, the property was subject to applicable provisions of Jackson County's OSR-20 zone, and the applicable provisions of Goal 3, ORS 215 and OAR 660, division 5, then in effect.

3. To the extent that any law, order, deed, agreement, or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains 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 claimant 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 claimant to use the subject property, it may be necessary for him 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 claimant 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 claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on July 21, 2006. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's 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.