

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR) FINAL ORDER
COMPENSATION UNDER ORS 197.352) CLAIM NO. M125167
(BALLOT MEASURE 37) OF)
Betty R. Rice, CLAIMANT)

Claimant: Betty R. Rice (the Claimant)

Property: Township 29S, Range 6W, Section 4, Tax lots 1000 and 2700, Douglas 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 order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Betty Rice's division of fifty 1- or 1.5-acre parcels from the 123.23-acre subject property or to her development of a dwelling on each parcel: applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after the claimant acquired each of the subject tax lots. These laws will not apply to the claimant only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired tax lot 1000 on December 2, 1953, and tax lot 2700 on May 27, 1976.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on December 2, 1953, for tax lot 1000 and on May 27, 1976, for tax lot 2700. On May 27, 1976, tax lot 1000 was subject to applicable provisions of Goals 3 and 14 and ORS 215 then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license

or other form of authorization or consent, the order will not authorize the use of the property unless the 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).

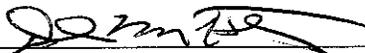
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable 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 Order is entered by the Deputy 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


Cora R. Parker, Deputy Director
DLCD
Dated this 23rd day of October, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 23rd day of October, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

October 23, 2006

STATE CLAIM NUMBER: M125167

NAME OF CLAIMANT: Betty R. Rice

MAILING ADDRESS: c/o Guy N. Kennerly
PO Box 206
Dillard, Oregon 97432

PROPERTY IDENTIFICATION: Township 29S, Range 6W, Section 4
Tax lots 1000 and 2700
Douglas County

DATE RECEIVED BY DAS: May 1, 2006

180-DAY DEADLINE: October 28, 2006

I. SUMMARY OF CLAIM

The claimant, Betty Rice, seeks compensation in the amount of \$1,750,000 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 claimant desires compensation or the right to divide fifty 1- or 1.5-acre parcels from the 123.23-acre subject property and to develop a dwelling on each parcel.¹ The subject property is located at 1345 Willis Creek Road, near Winston, in Douglas 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 Betty Rice's division of fifty 1- or 1.5-acre parcels from the 123.23-acre subject property and to her development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands), 4 (Forest Lands) and 14 (Urbanization),

¹ The state claim form does not clearly establish the nature of development the claimant desires. Douglas County's staff report for a county claim filed under ORS 197.352 for the same property indicates that the claimant desires to develop a dwelling on each of the desired 1- or 1.5-acre parcels. This report relies on the information in the county report. The subject property includes two tax lots. Tax lot 1000 consists of 114.95-acres, and tax lot 2700 consists of 8.28 acres.

ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6, and 33, enacted or adopted after she acquired each of the subject tax lots. These laws will not apply to the claimant only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired tax lot 1000 on December 2, 1953, and tax lot 2700 on May 27, 1976. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 31, 2006, 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, five written comments were received in response to the 10-day notice.

Four of 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.

One comment is relevant to whether the claimant is an owner of the subject property. The comment has been considered by the department in preparing this report. (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 May 1, 2006, for processing under OAR 125, division 145. The claim identifies Douglas County's FG and AW zoning 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 claimant, Betty Rice, acquired tax lot 1000 on December 2, 1953, and tax lot 2700 on May 27, 1976, as reflected by warranty deeds included with the claim. On February 18, 1994, the claimant transferred the subject property to the Betty Rice Revocable Trust, with Glenda R. Kennerly as trustee, as reflected by a bargain and sale deed included with the claim.² The Douglas County Assessor’s Office confirms the claimant’s current ownership of the subject property.

Conclusions

The claimant, Betty Rice, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of December 2, 1953, for tax lot 1000 and as of May 27, 1976, for tax lot 2700.

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 fifty 1- or 1.5-acre parcels from the 123.23-acre subject property and to develop a dwelling on each parcel. It indicates that the property’s current zoning prohibits the desired use.

The claim is based generally on the applicable provisions of state law that require mixed farm-forest and Exclusive Farm Use (EFU) zoning and restrict uses on land zoned mixed farm-forest and EFU-zoned land.

² Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

A portion of tax lot 1000 is zoned by Douglas County as Agriculture and Woodlot (AW), which is a mixed agricultural and forest land zone, as required by Goal 4 and the implementing provisions of OAR 660-006-0050 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.³ Depending on the predominant use on that date, the property is subject to either the requirements for dwellings applicable under EFU zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the 80-acre minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Douglas County's AW zone is 20 acres. A portion of tax lot 1000 cannot be divided into parcels smaller than 20 acres.

The remaining portion of tax lot 1000 and all of tax lot 2700 are zoned EFU-Grazing (FG), as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3.⁴ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. 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.)

³ No information was provided to the department regarding the predominant use of the property on January 1, 1993.

⁴ A portion of tax lot 1000 and all of tax lot 2700 are "agricultural land" because they contain Natural Resources Conservation Service Class I-IV soils.

Goal 14, which also became effective on January 25, 1975, would likely apply to the claimant's division of the property into parcels of less than two acres. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses.

The claimant acquired tax lot 1000 on December 2, 1953, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

The claimant acquired tax lot 2700 after the adoption of the statewide planning goals, but before the Commission acknowledged Douglas County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged the county's plan and land use regulations when the claimant acquired tax lot 2700 on May 27, 1976, the statewide planning goals, and Goal 3 in particular, applied directly to the claimant's property when she acquired it.⁵

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the claimant's opportunity to divide tax lot 2700 when she acquired it in 1976 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 May 27, 1976, 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 tax lot 2700 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 tax lot 2700 satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1973 edition).

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). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer applied directly to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established pursuant to applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33, were all enacted or adopted after the claimant acquired tax lot 1000 in 1953 and tax lot 2700 in 1976 and do not allow the desired division or residential development of the property. These laws restrict the use of the subject property relative to the uses allowed when the claimant acquired the property. However, the claim does not establish whether or the extent to which the claimant's desired use of tax lot 2700 complies with the standards for land divisions and development under the requirements of Goals 3 and 14 and ORS 215 in effect when the claimant acquired tax lot 2700 on May 27, 1976.

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 claimant has identified. There may be other laws that currently apply to the claimant's use of the subject property, and that may continue to apply to the claimant's 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 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.

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 \$1,750,000 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 included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimant is Betty Rice who acquired tax lot 1000 on December 2, 1953, and tax lot 2700 on May 27, 1976. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant 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 \$1,750,000.

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 Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33, which Douglas County has implemented through its current FG and AW zones. With the exception of applicable provisions of Goals 3 and 14 and ORS 215 in effect when the claimant acquired tax lot 2700 in 1976, these land use regulations were enacted or adopted after the claimant acquired the subject property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that with the exception of provisions of Goals 3 and 14 and ORS 215 in effect in 1976, the statutory, goal and rule restrictions on division and development of the claimant's property were not in effect when the claimant acquired it, and therefore, these laws are not exempt under ORS 197.352(3)(E). Provisions of Goals 3 and 14 and ORS 215 in effect when the claimant acquired tax lot 2700 in 1976 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimant acquired the subject property are also exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's use of the property. The department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. These provisions include fire protection standards for dwellings and for surrounding forest lands. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . ." To the extent they are applicable to the claimant's property, the siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B). In addition, Douglas County notes that the subject property is located in a flood plain zone. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety. . . ." To the extent the county's flood plain regulations are based on state law, these regulations would be exempt under ORS 197.352(3)(B).

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 subject 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. 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 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 she 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 her 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 laws that restrict the use of the subject 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 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 \$1,750,000. 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 claimant's desired use of the subject property was allowed under the standards in effect when she 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 Betty Rice to use the subject property for a use permitted at the time she acquired tax lot 1000 on December 2, 1953, and tax lot 2700 on May 27, 1976.

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 Betty Rice's division of fifty 1- or 1.5-acre parcels from the 123.23-acre subject property or to her development of a dwelling on each parcel: applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after the claimant acquired each of the subject tax lots. These laws will not apply to the claimant only to the extent necessary to

allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired tax lot 1000 on December 2, 1953, and tax lot 2700 on May 27, 1976.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on December 2, 1953, for tax lot 1000 and on May 27, 1976, for tax lot 2700. On May 27, 1976, tax lot 1000 was subject to applicable provisions of Goals 3 and 14 and ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the 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 her 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 October 5, 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.