

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. M129846
(BALLOT MEASURE 37) OF)	
Martin and Mary Hansen, CLAIMANTS)	

Claimants: Martin and Mary Hansen (the Claimants)

Property: Township 18S, Range 5W, Section 12: tax lot 2600
Township 18S, Range 5W, Section 13: tax lots 300 and 400
Township 18S, Range 5W, Section 14: tax lot 500
Lane 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 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 Martin and Mary Hansen's division of the 290-acre subject property into five 20-acre, six 15-acre, five 11-acre and six 6-acre parcels and to their development of a dwelling on each resulting undeveloped parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after each claimant acquired the subject property. 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 Martin Hansen acquired tax lots 300 and 400 on May 11, 1959, tax lot 2600 on January 5, 1962, and tax lot 500 on May 29, 1968, and when Mary Hansen acquired the property on May 3, 2004. The department acknowledges that the relief to which Mary Hansen is entitled under ORS 197.352 will not allow her to use the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect when Martin Hansen acquired tax lots 300 and 400 on May 11, 1959, tax lot 2600 on January 5, 1962, and tax lot 500 on May 29, 1968; and subject to the standards in effect when Mary Hansen acquired the property on March 4, 2004. On March 4, 2004, the property was subject to the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, currently in effect.

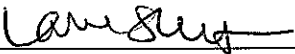
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants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

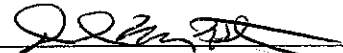
This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 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 5th day of February, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 5th day of February, 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
Final Staff Report and Recommendation**

February 5, 2007

STATE CLAIM NUMBER: M129846

NAMES OF CLAIMANTS: Martin and Mary Hansen

MAILING ADDRESS: 86616 Pine Grove Road
Eugene, Oregon 97402

PROPERTY IDENTIFICATION: Township 18S, Range 5W
Section 12: tax lot 2600
Section 13: tax lots 300 and 400
Section 14: tax lot 500
Lane County

OTHER CONTACT INFORMATION: Norman Waterbury
28788 Gimpl Hill Road
Eugene, Oregon 97402

DATE RECEIVED BY DAS: August 14, 2006

180-DAY DEADLINE: February 10, 2007

I. SUMMARY OF CLAIM

The claimants, Martin and Mary Hansen, seek compensation in the amount of \$4,420,000 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 290-acre subject property¹ into 22 parcels, consisting of five 20-acre, six 15-acre, five 11-acre and six 6-acre parcels, and to develop a dwelling on each resulting undeveloped parcel.² The subject property is located at geographic coordinates listed above, near Eugene, in Lane County. (See claim.)

¹ The subject property includes four tax lots. Tax lot 300 consists of 237 acres; tax lot 400 consists of 5.57 acres; tax lot 500 consists of 33.4 acres; and tax lot 2600 consists of 13.17 acres.

² The claim also indicates that the claimants desire to sell or transfer the newly created parcels for development. In effect, the claimants request that a decision of the department to "not apply" (waive) certain laws as set forth in this report be transferable with the property. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. A determination of transferability is beyond the scope of relief that the department may grant under ORS 197.352. The Oregon Department of Justice has advised the department that "[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost."

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 Martin and Mary Hansen's division of the 290-acre subject property into five 20-acre, six 15-acre, five 11-acre and six 6-acre parcels and to their development of a dwelling on each resulting undeveloped parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6, and 33, enacted or adopted after each claimant acquired the subject property. 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 Martin Hansen acquired tax lots 300 and 400 on May 11, 1959, tax lot 2600 on January 5, 1962, and tax lot 500 on May 29, 1968; and when Mary Hansen acquired the subject property on May 3, 2004. The department acknowledges that the relief to which Mary Hansen is entitled under ORS 197.352 will not allow her to use the subject property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On November 28, 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, two 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 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.³ (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

³ A neighbor letter submitted on this claim states that the property is on Native American land. The department does not have any evidence supporting this assertion.

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 August 14, 2006, for processing under OAR 125, division 145. The claim identifies Goals 3 and 4, provisions of ORS 215 and 197, OAR 660 divisions 6, and 33, and Lane County's F-2 and E-40 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

Martin Hansen acquired tax lots 300 and 400 on May 11, 1959, tax lot 2600 on January 5, 1962, and tax lot 500 on May 29, 1968, as reflected by warranty deeds included with the claim. On March 4, 2004, Martin Hansen transferred the subject property to the Hansen Family Revocable Trust, with himself and Mary Hansen as trustees, as reflected by a warranty deed included with the claim.⁴ The Lane County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Martin and Mary Hansen, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C). Martin Hansen has been an owner of tax lots 300 and 400 since May 11, 1959, of tax lot 2600 since January 5, 1962, and of tax lot 500 since May 29, 1968. Mary Hansen, wife of Martin Hansen, has been an owner of the subject property since March 4, 2004. Martin Hansen is a "family member" of Mary Hansen as that term is defined by ORS 197.352(11)(A).

⁴ Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

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 or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the 290-acre subject property into 22 parcels, consisting of five 20-acre, six 15-acre, five 11-acre and six 6-acre parcels, and to develop a dwelling on each resulting undeveloped parcel and that the use is not allowed under current land use regulations.⁵

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) and forest zoning.

Tax lots 500 and 2600 are zoned Exclusive Farm Use (E-40) by Lane County, 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 3.⁶ 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 215.213, 215.263 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the division of EFU-zoned land in marginal lands counties into parcels less than 80 acres and establish standards for the development of dwellings on existing or any proposed parcel on that land.

ORS 215.780 generally 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). Under ORS 215.780(2)(a), a county may adopt a lower minimum lot or parcel size, subject to acknowledgment by the Commission. The Commission has acknowledged Lane County's EFU-40 zone, which requires a minimum lot or parcel size of 40 acres. 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 in a marginal lands county under ORS 215.213. OAR 660-033-0130(4)(e) (applicable to non-farm dwellings in marginal lands counties) became effective on August 7, 1993. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001,

⁵ The claimants summarily cite numerous state land use laws as applicable to this claim, but do not establish how the laws either apply to the claimants' desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimants' property or do not restrict the use of the claimants' property in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' use of the subject property, based on the claimants' description of their desired use.

⁶ The claimants' property is "agricultural land" because it contains National Resources Conservation Service Class I-IV soils.

effective on January 1, 2002), which became effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Tax lots 300 and 400 are zoned Impacted Forest (F2) by Lane County, as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimants' property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

Martin Hansen acquired tax lots 300 and 400 in 1959, tax lot 2600 in 1962 and tax lot 500 in 1968, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, were enacted or adopted after Martin Hansen acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when Martin Hansen 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 \$4,420,000 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 an August 9, 2006, appraisal report included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are Martin Hansen who acquired tax lots 300 and 400 in 1959, tax lot 2600 in 1962 and tax lot 500 in 1968 and his wife, Mary Hansen. 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 Martin Hansen acquired the subject property restrict the claimants' desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$4,420,000.

Without additional evidence and documentation establishing that the laws identified in Section V.(2) have the effect of reducing the subject property's fair market, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the 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 since Martin Hansen acquired the property.

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 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Lane County has implemented through its current F-2 and E-40 zones. These land use regulations were enacted or adopted after Martin Hansen 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 none of the general statutory, goal and rule restrictions on division and development of the claimants' property were in effect when Martin Hansen acquired tax lots 300 and 400 in 1959, tax lot 2600 in 1962 and tax lot 500 in 1968. As a result, these laws are not exempt under ORS 197.352. Laws in effect when Martin Hansen acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, 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 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 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 \$4,420,000. However, without additional relevant evidence and documentation 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 subject property was allowed under the standards in effect when Martin Hansen 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 Martin Hansen to use the subject property for a use permitted at the time he acquired tax lots 300 and 400 on May 11, 1959, tax lot 2600 on January 5, 1962, and tax lot 500 on May 29, 1968, and to allow Mary Hansen to use the subject property for a use permitted at the time she acquired it on March 4, 2004.

At the time Mary Hansen acquired an interest in the subject property, tax lots 300 and 400 were zoned F2 and tax lots 500 and 2600 were zoned E-40 by Lane County, and subject to the current lot size and dwelling standards under Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33 and as described in Section V.(2) of this report.

In addition to the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, in effect when Mary Hansen acquired the property on March 4, 2004, and other laws in effect when either of the claimants acquired the subject property, there may be other laws that 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 Martin Hansen 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 claimants' 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 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 their 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.

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 Martin and Mary Hansen's division of the 290-acre subject property into five 20-acre, six 15-acre, five 11-acre and six 6-acre parcels and to their development of a dwelling on each resulting undeveloped parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after each claimant acquired the subject property. 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 Martin Hansen acquired tax lots 300 and 400 on May 11, 1959, tax lot 2600 on January 5, 1962, and tax lot 500 on May 29, 1968, and when Mary Hansen acquired the property on May 3, 2004. The department acknowledges that the relief to which Mary Hansen is entitled under ORS 197.352 will not allow her to use the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect when Martin Hansen acquired tax lots 300 and 400 on May 11, 1959, tax lot 2600 on January 5, 1962, and tax lot 500 on May 29, 1968; and subject to the standards in effect when Mary Hansen acquired the property on March 4, 2004. On March 4, 2004, the property was subject to the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, currently 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 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 January 18, 2007. 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.