



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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March 26, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Numbers M130164

Claimant: Ardith Towle

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

This Final Staff Report and Recommendation and the 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 |) | FINAL ORDER |
| COMPENSATION UNDER ORS 197.352 |) | CLAIM NO.M130164 |
| (BALLOT MEASURE 37) OF |) | |
| Ardith Towle, CLAIMANT |) | |

Claimant: Ardith Towle (the Claimant)

Property: Township 3S, Range 40E, Section 26, Tax lots 100, 200 and 400
Union 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 Ardith Towle's division of tax lots 100 and 400 into one 2.74-acre parcel, one 4.22-acre parcel and twenty-six 5-acre parcels or her development of a dwelling on each parcel; or to her development of a dwelling on tax lot 200: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33. These land use regulations 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 400 on October 7, 1953, tax lot 100 on September 16, 1960, and tax lot 200 on January 19, 1983.
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 October 7, 1953, September 16, 1960, and January 19, 1983. In 1983, tax lot 200 was subject to the provisions of Goals 3 or 4 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).

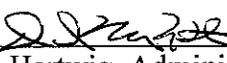
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable 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 26th day of March, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 26th day of March, 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

March 26, 2007

STATE CLAIM NUMBER: M130164

NAME OF CLAIMANT: Ardith Towle

MAILING ADDRESS: 60076 McNeil Road
Cove, Oregon 97824

PROPERTY IDENTIFICATION: Township 3S, Range 40E, Section 26
Tax lots 100, 200 and 400
Union County

OTHER CONTACT INFORMATION: D. Rahn Hostetter
PO Box 400
Enterprise, Oregon 97828

DATE RECEIVED BY DAS: October 2, 2006

180-DAY DEADLINE: March 31, 2007

I. SUMMARY OF CLAIM

The claimant, Ardith Towle, seeks compensation in the amount of \$2,050,000 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 tax lots 100 and 400 into one 2.74-acre parcel, one 4.22-acre parcel and twenty-six 5-acre parcels and develop a dwelling on each parcel; and to develop a dwelling on tax lot 200.¹ The subject property is located at 60076 McNeil Road, near Cove, in Union 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 Ardith Towle's division of tax lots 100 and 400 into one 2.74-acre parcel, one 4.22-acre parcel and twenty-six 5-acre parcels and her development of a dwelling on each parcel; and to her development of a dwelling on tax lot 200: applicable provisions of Statewide Planning

¹ The subject property includes three tax lots totaling 151.96 acres. Tax lot 100 consists of 64.22 acres; and tax lot 200 consists of 15 acres; and tax lot 400 consists of 72 acres.

Goals 3 (Agricultural Lands) and 4 (Forest Lands), 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 400 in 1953, tax lot 100 in 1960 and tax lot 200 in 1983. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On January 24, 2007, 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, no written comments were received in response to the 10-day notice.

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 October 2, 2006, for processing under OAR 125, division 145. The claim identifies Goals 3, 4 and 5, ORS 215 and OAR 660, divisions 23, and 33, 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, Ardith Towle, acquired tax lots 400 on October 7, 1953, as reflected by a real estate contract, tax lot 100 on September 16, 1960, as reflected by a warranty deed and tax lot 200 on January 19, 1983, as reflected by a deed, all of which were included with the claim. On July 2, 1992, the claimant transferred the property to a revocable trust, the Towle Living Trust, with herself as trustee, as reflected by a deed included with the claim.² The Union County Assessor’s Office confirms the claimant’s current ownership of the subject property.

Conclusions

The claimant, Ardith Towle, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of October 7, 1953, for tax lot 400, as of September 16, 1960, for tax lot 100 and as of January 19, 1983, for tax lot 200.

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 tax lots 100 and 400 into one 2.74-acre parcel, one 4.22-acre parcel and twenty-six 5-acre parcels and develop a dwelling on each parcel; and to develop a dwelling on tax lot 200. The claim also indicates that current land use laws prohibit the desired use.³

The claim is based generally on the applicable provisions of state law that require mixed farm-forest zoning and restrict uses on land zoned mixed farm-forest. The claimant’s property is zoned by Union County as A-4 (Timber Grazing), which is a mixed agricultural and forest land zone, as required by Goal 4 and the implementing provisions of OAR 660-006-0050 (effective

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

³ The claimant also summarily cites Goal 5 as applicable to this claim, but does not explain or establish how this goal applies to the claimant’s desired use of the subject property or restrict its use with the effect of reducing its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimant’s desired use of the subject property, based on the claimant’s description of that desired use.

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, 1993.⁴ Depending on the predominant use on that date, the property is subject to either the requirements for dwellings applicable under Exclusive Farm Use (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. The minimum lot size in Union County's A-4 zone is 160 acres. The claimant's property cannot be divided into parcels smaller than 160 acres.

The claimant acquired tax lot 400 on October 7, 1953, and tax lot 100 on September 16, 1960, prior to the adoption of statewide planning goals and their implementing statutes and regulations.

The claimant acquired tax lot 200 on January 19, 1983, after the adoption of the statewide planning goals, but before the Commission acknowledged Union County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.⁵ Because the Commission had not acknowledged the county's plan and land use regulations when the claimant acquired tax lot 200 on January 19, 1983, the applicable statewide planning goals would have applied directly to any development application for the claimant's property.⁶

As adopted in 1975, Goal 3 required that agricultural lands be preserved and zoned for EFU pursuant to ORS 215. Goal 4, as adopted in 1975, required that forest lands be designated for forest uses. Depending on the nature of this portion of the property when the claimant acquired it, the property would have been subject to Goal 3 or 4 and either EFU zoning pursuant to ORS 215 or forest zoning adequate to retain forest lands for forest uses.

Under Goal 3, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1975 edition),⁷ and non-farm dwellings

⁴ No information was provided to the department regarding the predominant use of tax lot 200 on January 1, 1993.

⁵ Union County's comprehensive plan was acknowledged on October 30, 1985.

⁶ 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 land use 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 569 (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 directly applied 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); *Kenagy v. Benton County*, 115 Or App 131 (1992).

⁷ Under ORS 215.213, a farm dwelling could be established on agricultural land only if the farm use to which the dwelling relates exists (*Newcomer v. Clackamas County*, 92 Or App 174, modified 94 Or App 33 (1988) and *Matteo v. Polk County*, 11 Or LUBA 259, 263 (1984), affirmed without opinion 70 Or App 179 (1984)). Guidance on the application of the statutory standards for farm and non-farm dwellings in EFU zones can be found in the

were subject to ORS 215.213(3) (1975 edition).⁸ Other uses were authorized and governed by the applicable provisions under Goal 3 and ORS 215.213.

Under Goal 4, the state standards required uses to “conserve forest lands for forest uses.” Dwellings in forest zones could only be allowed if found to be “necessary and accessory” to one of the enumerated forest uses listed in Goal 4.⁹

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established under Goal 4 for lands zoned for mixed farm-forest use and the statutory and rule restrictions under applicable provisions of ORS 215 and OAR 660, divisions 6, and 33, were enacted or adopted after the claimant acquired tax lot 400 in 1953, tax lot 100 in 1960 and tax lot 200 in 1983, and do not allow the desired division and 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 to what extent the claimant’s desired use of the subject property complies with the standards for development under Goal 3 or 4 and ORS 215 applicable and in effect when the claimant acquired tax lot 200 on January 19, 1983.

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. 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 regulations (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.”

Commission rules (OAR 660, division 5, adopted on July 21, 1982, amended on June 7, 1986, and repealed on August 7, 1993).

⁸ When determining whether land is “generally unsuitable for the production of farm crops and livestock” under ORS 215.213(3), the entire parcel or tract must be evaluated rather than a portion thereof. *Smith v. Clackamas County*, 313 Or 519 (1992).

⁹ Goal 4 prohibited uses that were not enumerated by Goal 4 as permissible uses for forest lands as well as those that were not necessary and accessory to an enumerated forest use. *Lamb v. Lane County*, 7 Or LUBA 137 (1983). Dwellings in forest lands were required to be “necessary and accessory” to show that such dwellings complied with the Goal 4 requirement that local land use regulations must “conserve forest lands for forest uses.” *1000 Friends v. LCDC (Curry County)*, 301 Or 447 (1986). A dwelling that may “enhance” forest uses is not “necessary and accessory” to a forest use to the extent required by Goal 4. *1000 Friends of Oregon v. LCDC (Lane County)*, 305 Or 384 (1988). For additional guidance, the Goal 4 provisions were interpreted under OAR 660, division 6, effective on September 1, 1982, in *1000 Friends of Oregon v. LCDC (Lane County)* and in *1000 Friends v. LCDC (Curry County)*.

Findings of Fact

The claim includes an estimate of \$2,050,000 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 the claimant's assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimant is Ardith Towle who acquired tax lot 400 on October 7, 1953, tax lot 100 on September 16, 1960, and tax lot 200 on January 19, 1983. 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 \$2,050,000.

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 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 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Union County has implemented through its A-4 zone. With the exception of provisions of Goals 3 and 4 and ORS 215 in effect when the claimant acquired tax lot 200 in 1983, all of 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 4 and ORS 215 in effect when the claimant acquired tax lot 200 in 1983, none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimant acquired it in 1953, 1960 and 1983. As a result, these laws are not exempt under ORS 197.352(3)(E). Provisions of Goals 3 and ORS and ORS 215 in effect in 1983 are exempt and will continue to apply to tax lot 200.

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. In addition, the department notes that ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-0029, include standards for siting dwellings in forest zones. The provisions include fire protection standards for dwellings and for surrounding forest zones. 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).

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 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. 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 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 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 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 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 \$2,050,000. 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 Ardith Towle to use the subject property for a use permitted when she acquired tax lot 400 on October 7, 1953, tax lot 100 on September 16, 1960, and tax lot 200 on January 19, 1983.

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 Ardith Towle's division of tax lots 100 and 400 into one 2.74-acre parcel, one 4.22-acre parcel and twenty-six 5-acre parcels or her development of a dwelling on each parcel; or to her development of a dwelling on tax lot 200: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33. These land use regulations 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 400 on October 7, 1953, tax lot 100 on September 16, 1960, and tax lot 200 on January 19, 1983.
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 October 7, 1953, September 16, 1960, and January 19, 1983. In 1983, tax lot 200 was subject to the provisions of Goals 3 or 4 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 March 5, 2007. 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.