



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office Fax: (503) 378-5518

Third Floor/Measure 37 Fax: (503) 378-5318

Web Address: <http://www.oregon.gov/LCD>

July 16, 2007

To: Interested Persons

From: Lane Shetterly, Director



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M130685*

*Claimant: Stanley E. McNutt*

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. M130685
(BALLOT MEASURE 37) OF	)	
Stanley E. McNutt, CLAIMANT	)	

Claimant: Stanley E. McNutt (the Claimant)

Property: Township 17S, Range 1W, Sections 26 and 27: tax lot 1800  
Township 17S, Range 1W, Sections 22, 26 and 27: tax lot 400  
Lane 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 denied for the southwest approximately four-acre corner of tax lot 1800 as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

The Claim is approved for tax lot 400 and a 91.49-acre portion of tax lot 1800 as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Stanley McNutt's division of tax lot 400 and a 91.49-acre portion of tax lot 1800 into 20 approximately 3.2- to 12.4-acre parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 400 on June 1, 1971, and the 91.49-acre portion of tax lot 1800 on June 11, 1971.

2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lot 400 and the 91.49-acre portion of tax lot 1800 for the use described in this report, subject to the standards in effect in 1971.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

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

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

6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

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

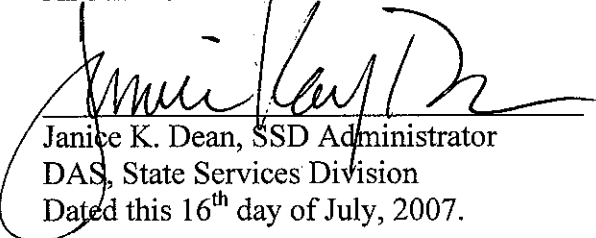
FOR DLCD AND THE LAND  
CONSERVATION AND  
DEVELOPMENT COMMISSION:

Lane Shetterly, Director

  
Cora R. Parker, Deputy Director  
DLCD

Dated this 16<sup>th</sup> day of July, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
Janice K. Dean, SSD Administrator  
DAS, State Services Division

Dated this 16<sup>th</sup> day of July, 2007.

## **NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF**

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

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

July 16, 2007

**STATE CLAIM NUMBER:** M130685

**NAME OF CLAIMANT:** Stanley E. McNutt

**MAILING ADDRESS:** PO Box 357  
Walterville, Oregon 97489

**PROPERTY IDENTIFICATION:** Township 17S, Range 1W  
Sections 26 and 27: tax lot 1800  
Sections 22, 26 and 27: tax lot 400  
Lane County

**OTHER CONTACT INFORMATION:** Steve Cornacchia, Hershner Hunter  
180 E. 11th Avenue  
Eugene, Oregon 97401

**DATE RECEIVED BY DAS:** November 13, 2006

**DEADLINE FOR FINAL ACTION:<sup>1</sup>** May 6, 2008

**I. SUMMARY OF CLAIM**

The claimant, Stanley McNutt, seeks compensation in the amount of \$4.57 million for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the 152.56-acre subject property into 20 approximately 3.2- to 12.4-acre parcels and to develop a dwelling on each parcel.<sup>2</sup> The subject property is located south of Highway 126, along the McKenzie River, near Walterville, in Lane 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 in part. Department staff

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<sup>1</sup> ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

<sup>2</sup> The subject property includes two parcels. Tax lot 400 consists of 57.07 acres, and tax lot 1800 consists of 95.49 acres.

recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Stanley McNutt's division of tax lot 400 and a 91.49-acre portion of tax lot 1800 into 20 approximately 3.2- to 12.4-acre parcels and to his development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33. These laws will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 400 on June 1, 1971, and the 91.49-acre portion of tax lot 1800 on June 11, 1971.

The department has further determined that the claim is not valid for the southwest approximately four-acre corner of tax lot 1800 because the claimant has not established his ownership of that portion of the property. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On April 4, 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 November 13, 2006, for processing under OAR 125, division 145. The claim identifies Goals 2 (Land Use Planning), 3, 5 (Open Spaces), 6 (Air, Water and Land Resources Quality), 11 (Public Facilities and Services) and 14 (Urbanization); and provisions of ORS 197 and 215 and OAR 660, divisions 14, 15, 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, Stanley McNutt, acquired tax lot 400 on June 1, 1971, as reflected by executor’s deeds included with the claim.

The claimant asserts he acquired tax lot 1800 on May 29, 1958, based on a deed included with the claim. However, that deed conveyed tax lot 1800 to McNutt McKenzie River Ranch, a partnership between J. Ira McNutt and Stanley McNutt.<sup>3</sup> The claimant did not acquire tax lot 1800 as an individual until June 11, 1971, when the Estate of J. Ira McNutt conveyed its distributed share of tax lot 1800 to the claimant, as reflected by an executor’s deed included with the claim. At that time, the legal description for tax lot 1800 excluded approximately four acres in the southwest corner of the property.

The claim includes no documentation of the claimant’s acquisition of the approximately four-acre southwest corner of the property. The claimant submitted only a legal description, entitled “Exhibit B Legal Description Revised Boundary for Tract 1 (McNutt Property),” stamped with the year 2005, which includes the southwest corner. However, that legal description does not establish the claimant’s ownership of or acquisition date for that portion of the property.<sup>4</sup>

The Lane County Assessor’s Office confirms the claimant’s current ownership of the subject property.

## **Conclusions**

The claimant, Stanley McNutt, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of June 1, 1971, for tax lot 400 and June 11, 1971, for the 91.49-acre

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<sup>3</sup> Under ORS 197.352(11)(A), legal entities can be “family members” of individuals who are owners of property under ORS 197.352(11)(C). However, legal entities cannot have family members under the statute. Therefore, individuals who transferred property to the LLC are not considered family members under the definition of family member in ORS 197.352(11)(A).

<sup>4</sup> The revised boundary legal description included in the claim was apparently executed in 2005. Even if that description included documentation that the claimant acquired that portion of the property in 2005, the claimant’s desired use of the property was prohibited under the laws in effect in 2005, and no land use regulations enacted or adopted since 2005 restrict the claimant’s desired use of the property relative to uses permitted at that time.

portion of tax lot 1800. The claimant has not established his ownership or the date of his acquisition of the approximately four acres in the southwest corner of tax lot 1800.

## **2. The Laws That are the Basis for This Claim**

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimant's use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

### **Findings of Fact**

The claim indicates that the claimant desires to divide the 152.56-acre subject property into 20 approximately 3.2- to 12.4-acre parcels and to develop a dwelling on each parcel, and that current land use regulations prevent the desired use.<sup>5</sup>

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimant's property is zoned EFU 30 by Lane County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant's property is "agricultural land" as defined by Goal 3.<sup>6</sup> 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, prohibit the division of EFU-zoned land in marginal lands counties 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). Under ORS 215.780(2)(a), counties may adopt minimum lot sizes smaller than 80 acres, subject to approval by the Commission. The Commission has approved Lane County's EFU 30 zone, which requires a minimum lot size of 30 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

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<sup>5</sup> The claimant summarily lists numerous state land use laws as applicable to this claim, but does not establish how the laws either apply to the claimant's desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimant's property or do not restrict the use of the claimant's property 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 his desired use.

<sup>6</sup> The claimant's property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

marginal lands counties) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994.<sup>7</sup>

The claimant acquired tax lot 400 on June 1, 1971, and the 91.49-acre portion of tax lot 1800 on June 11, 1971, 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 Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimant acquired tax lot 400 and the 91.49-acre portion of tax lot 1800 in 1971 and do not allow the claimant's desired division or development of the property. These laws restrict the use of the subject property relative to the uses allowed when the claimant acquired that portion of the property.

As explained in Section V.(1), the claimant, Stanley McNutt, has not established his ownership of the approximately four acres in the southwest corner of tax lot 1800 as the term "owner" is defined in ORS 197.352(11)(C). Without such demonstration, it is not possible to determine that any laws enforced by the Commission or the department restrict the claimant's desired use of the four-acre portion with the effect of reducing 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 may have 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 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."

### **Findings of Fact**

The claim includes an estimate of \$4.57 million 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 conditional appraisal included with the claim.

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<sup>7</sup> The Commission adopted amendments to OAR 660-033-0100, -0130 and -0135 to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. These amendments clarified but did not further restrict dwelling standards for EFU-zoned land.

## **Conclusions**

As explained in Section V.(1) of this report, the claimant is Stanley McNutt who acquired tax lot 400 on June 1, 1971, and the 91.49-acre portion of tax lot 1800 June 11, 1971. The claimant has not established his ownership of the four acres in the southwest corner of tax lot 1800. Without such demonstration, the department can make no determination on the effect of any land use regulations on the fair market value of that portion of the property.

Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of tax lot 400 and the 91.49-acre portion of tax lot 1800 and have the effect of reducing their fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant acquired tax lot 400 and the 91.49-acre portion of tax lot 1800 restrict the claimant's desired use of the tax lots. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$4.57 million.

Without additional evidence and documentation to establish whether or the extent to which the land use regulations identified in Section V.(2) have the effect of reducing the subject property's fair market value, 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 tax lot 400 and the 91.49-acre portion of tax lot 1800 has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

## **4. Exemptions Under ORS 197.352(3)**

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

## **Findings of Fact**

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Lane County has implemented through its current EFU 30 zone. All of these land use regulations were enacted or adopted after the claimant acquired tax lot 400 and the 91.49-acre portion of tax lot 1800.

## **Conclusions**

Without a more 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 tax lot 400 and the 91.49-acre portion of tax lot 1800 were in effect when the claimant acquired these tax lots in 1971. As a result, these laws are not exempt under ORS 197.352(3)(E).

As explained in Section V.(1) of this report, the claimant has not established his ownership of the approximately four-acre southwest corner of tax lot 1800 as the term "owner" is defined in ORS

197.352(11)(C). Without such demonstration, the department can make no determination as to whether any land use laws are exempt from ORS 197.352.

Laws in effect when the claimant acquired tax lot 400 and the 91.49-acre portion of tax lot 1800 are exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's use of the tax lots. In addition, Lane County notes that a portion of 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 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 he has provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to his use of the subject property.

## **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 record, the department finds that the claim is not valid as to approximately four acres in the southwest corner of tax lot 1800 because the claimant has not established his ownership or acquisition date of that portion of the property. The department further finds laws enforced by the Commission or the department restrict the claimant's desired use of tax lot 400 and the 91.49-acre portion of tax lot 1800. 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 \$4.57 million. However, because the claim does not provide sufficient 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 he 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 tax lot 400 and the 91.49-acre portion of tax lot 1800 to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Stanley McNutt to use tax lot 400 and the 91.49-acre portion of tax lot 1800 for a use permitted at the time he acquired tax lot 400 on June 1, 1971, and the 91.49-acre portion of tax lot 1800 on June 11, 1971.

### **Conclusions**

Based on the record and the foregoing findings and conclusions, as to the approximately four-acre portion of tax lot 1800, the claimant has not established that he is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because the claimant has not established his ownership or acquisition date of that portion of the subject property. Therefore, the department recommends that this claim be denied as to the four-acre portion of tax lot 1800.

The department otherwise recommends that the claim for tax lot 400 and the 91.49-acre portion of tax lot 1800 be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Stanley McNutt's division of tax lot 400 and a 91.49-acre portion of tax lot 1800 into 20 approximately 3.2- to 12.4-acre parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 400 on June 1, 1971, and the 91.49-acre portion of tax lot 1800 on June 11, 1971.
2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lot 400 and the 91.49-acre portion of tax lot 1800 for the use described in this report, subject to the standards in effect in 1971.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.
4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or

enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

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

6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on June 4, 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.