



Oregon

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Department of Land Conservation and Development

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November 1, 2007

To: Interested Persons

From: Cora R. Parker, Acting Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M131255

Claimants: Robert H. and David Harrison

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. M131255
(BALLOT MEASURE 37) OF)
Robert H. Harrison and David Harrison, CLAIMANTS)

Claimants: Robert H. Harrison and David Harrison, (the Claimants)

Property: Township 8S, Range 38E, Section 23: tax lot 3900
Township 8S, Range 38E, Section 26BA: tax lot 100
Township 8S, Range 40E, Section 17, Tax lot 3500
Baker 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 Robert H. and David Harrison's re-development of an existing dwelling on tax lot 100, development of two additional dwellings on tax lot 3900 and development of an additional dwelling and re-development of one of the existing dwellings on tax lot 3500: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after the claimants acquired each tax lot. These laws 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 they acquired tax lot 3500 on December 31, 1969, and when they acquired tax lots 100 and 3900 on April 18, 1987.
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 on December 31, 1969, for tax lot 3500 and April 18, 1987, for tax lots 100 and 3900. On April 18, 1987, tax lots 100 and 3900 were subject to compliance with Goal 3 or 4, and OAR 660, division

5, or 6, as implemented through Baker County's acknowledged T/G zone, and the applicable provisions 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 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.

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 Acting 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 Manager for the Measure 37 Services Unit 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:



Cora R. Parker, Acting Director
DLCD

Dated this 1st day of November, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Carla Ploederer, Manager
DAS, Measure 37 Services Unit

Dated this 1st day of November, 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

November 1, 2007

STATE CLAIM NUMBER: M131255

NAMES OF CLAIMANTS: Robert H. Harrison
David Harrison

MAILING ADDRESS: Robert H. Harrison
3080 N 2nd Street
Baker City, Oregon 97814

David Harrison
911W 2200N
Pleasant Grove, Utah 84062

PROPERTY IDENTIFICATION: Township 8S, Range 38E
Section 23: tax lot 3900
Section 26BA: tax lot 100

Township 8S, Range 40E, Section 17
Tax lot 3500
Baker County

DATE RECEIVED BY DAS: November 24, 2006

DEADLINE FOR FINAL ACTION:¹ May 17, 2008

I. SUMMARY OF CLAIM

The claimants, Robert H. and David Harrison, seek compensation in the amount of \$394,550 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 re-develop an existing dwelling on tax lot 100, to develop two additional dwellings on tax lot 3900 and to develop an additional dwelling and re-develop one of the existing dwellings on tax lot 3500.²

¹ 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.

² The subject property includes three tax lots. Tax lot 100 consists of 9.8 acres, tax lot 3900 consists of 220 acres and tax lot 3500 consists of 319.25 acres.

The subject property is located on Chandler Lane and Pine Creek Lane, in Baker 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 Robert H. and David Harrison's re-development of an existing dwelling on tax lot 100, development of two additional dwellings on tax lot 3900 and development of an additional dwelling and re-development of one of the existing dwellings on tax lot 3500: 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 the claimants acquired each tax lot. These laws 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 they acquired tax lot 3500 on December 31, 1969, and when they acquired tax lots 100 and 3900 on April 18, 1987. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On July 10, 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 15-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 24, 2006, for processing under OAR 125, division 145. The claim identifies Goals 3 and 4, ORS 215 and OAR 660, divisions 5, and 6, 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 claimants, Robert H. and David Harrison, acquired tax lot 3500 on December 31, 1969, as reflected by a warranty deed provided by Baker County.³ Robert H. and David Harrison, acquired tax lots 100 and 3900, from their father, Robert T. Harrison, on April 18, 1987, as evidenced by a petition for probate of will and appointment of personal representative, provided by the Department of Administrative Services. Robert T. Harrison acquired tax lot 3900 on September 19, 1961, and acquired tax lot 100 on April 10, 1968, as reflected by warranty deeds included with the claim. The Baker County Assessor’s Office confirms the claimants’ current ownership of the subject property.

Conclusions

The claimants, Robert H. and David Harrison, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of December 31, 1969, for tax lot 3500 and as of April 18, 1987, for tax lots 100 and 3900. Robert T. Harrison is a “family member” as defined by ORS 197.352(11)(A) as to tax lots 3900 and 100, and acquired tax lot 3900 on September 19, 1961, and tax lot 100 on April 10, 1968.

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.

³ The claimants acquired tax lot 3500 from their father, Robert T. Harrison, but have not provided evidence of when their father acquired that tax lot. Absent documentation from the claimants to establish a family acquisition date for tax lot 3500, the department cannot evaluate the claim for compensation as to tax lot 3500 based on family ownership.

Findings of Fact

The claim indicates that the claimants desire to re-develop an existing dwelling on tax lot 100, to develop two additional dwellings on tax lot 3900 and to develop an additional dwelling and re-develop one of the existing dwellings on tax lot 3500. The claim indicates that current land use regulations prevent the desired use.

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

Tax lot 3500 is zoned EFU by Baker 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 3.⁴ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, establish standards for the development of dwellings on existing or any proposed parcel on EFU-zoned land.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994.⁵

Tax lots 100 and 3900 are zoned Timber/Grazing (T/G) by Baker County. The county's T/G zone is a mixed agricultural and forest land zone, in accordance with Goals 3 and 4, as implemented by OAR 660-006-0050. Goals 3 and 4 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned for farm uses and that forest lands under Goal 4 be zoned for forest uses. OAR 660-006-0050 authorizes local governing bodies to establish mixed agriculture-forest zones in accordance with both Goals 3 and 4 and OAR 660, divisions 6, and 33.

Under OAR 660-006-0050(2), effective on February 5, 1990, and subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993), uses allowed in EFU zones under Goal 3 and forest zones under Goal 4 are allowed in mixed agriculture-forest zones.

For the approval and siting of dwellings, under OAR 660-006-0050(2) and (3), counties must apply either the OAR 660, division 6, or 33, standards based on the predominant use of the tract on January 1, 1993.⁶ The provisions of OAR 660-006-0027 and 660-006-0029 apply to dwelling approval and siting where the predominant use of the tract on that date was forest, and the

⁴ The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-VI soils.

⁵ The Commission subsequently 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.

⁶ The claim does not include information regarding the predominant use of the property on January 1, 1993.

provisions of OAR 660-033-0030 and 660-033-0035 apply where the predominant use of the tract on that date was agriculture.

The claimants' family first acquired tax lot 3900 in 1961 and tax lot 100 in 1968 and the claimants acquired tax lot 3500 in 1969, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1961, 1968 or 1969.

Conclusions

The current zoning requirements and dwelling standards established by applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, were all enacted or adopted after the claimants' family acquired tax lots 100 and 3900 and after the claimants acquired tax lot 3500. These laws restrict the use of the subject property relative to the uses allowed when the claimants' family acquired tax lots 100 and 3900 and when the claimants acquired tax lot 3500.

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 \$394,550 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 claimants' assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Robert H. and David Harrison who acquired tax lot 3500 in 1969 and whose family member acquired tax lot 3900 in 1961 and tax lot 100 in 1968. 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 the claimants' family acquired tax lots 100 and 3900, and since the claimants acquired tax lot 3500, 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 \$394,500.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the claimants' family acquired tax lot 100 and 3900 and since the claimants acquired tax lot 3500.

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 Baker County has implemented through its current EFU and T/G zones. All of these land use regulations were enacted or adopted after the claimants' family acquired tax lots 100 and 3900 and after the claimants acquired tax lot 3500.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimants' family acquired tax lot 100 on April 10, 1968, and tax lot 3900 on September 19, 1961, and when the claimants acquired tax lot 3500 on December 31, 1969. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimants' family acquired tax lots 100 and 3900 and when the claimants acquired tax lot 3500 are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use 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 \$394,550. 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 claimants' desired use of the subject property was allowed under the standards in effect when the claimants' family acquired tax lots 100 and 3900 and when the claimants

acquired tax lot 3500. 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 Robert H. and David Harrison to use tax lot 3500 for a use permitted at the time they acquired that tax lot on December 31, 1969, and to allow them to use tax lots 100 and 3900 for a use permitted at the time they acquired those tax lots on April 18, 1987.

When the claimants acquired tax lots 100 and 3900 on April 18, 1987, the claimants' property was subject to Baker County's acknowledged comprehensive plan and T/G zone.⁷ That zone required a minimum of 80 acres for farm/forest use and a minimum of 10 acres for a non-farm/forest/residential use. Dwellings were permitted. At that time, the claimants' desired use of tax lots 100 and 3900 would have been subject to compliance with Goal 3 or 4, and OAR 660, division 5, or 6, as implemented through the county's acknowledged T/G zone, and the applicable provisions of ORS 215 then in effect.⁸

The claim does not establish whether or to what extent the claimants' desired development of tax lots 100 and 3900 were allowed under the standards in effect when they acquired the property on April 18, 1987.

In addition to the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660 in effect on April 18, 1987, and other laws in effect when the claimants acquired any of 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. The department also notes that ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-0027, -0029 and -0035, include fire protection standards for dwellings and structures in forest and mixed agriculture-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. . . ." Accordingly, the siting standards for dwellings and structures in forest zones in ORS 215.730

⁷ Baker County's T/G zone was acknowledged by the Commission for compliance with Goals 3 and 4 on May 16, 1986.

⁸ After the county's comprehensive plan and land use regulations were acknowledged by the Commission as complying with the statewide planning goals, the goals and implementing rules no longer applied directly to individual local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

On April 18, 1987, ORS 215.263 (1985 edition), ORS 215.263 (1985 edition) required that divisions of land in EFU zones be "appropriate for the continuation of the existing commercial agricultural enterprise within the area" or not smaller than the minimum size in the county's acknowledged plan. ORS 215.283(1)(f) (1985 edition) generally allowed farm dwellings "customarily provided in conjunction with farm use." Non-farm dwellings were allowed under ORS 215.283(3) if they were determined to be compatible with farm use, not interfere seriously with accepted farm practices, not materially alter the stability of the land use pattern in the area and be situated on generally unsuitable land for the production of farm crops and livestock.

and in forest and mixed agriculture-forest zones in OAR 660, division 6, are exempt under ORS 197.352(3)(B). In addition, Baker County notes that a portion of tax lot 3500 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).

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, 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 uses 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 Robert H. and David Harrison’s re-development of an existing dwelling on tax lot 100, development of two additional dwellings on tax lot 3900 and development of an additional dwelling and re-development of one of the existing dwellings on tax lot 3500: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after the claimants acquired each tax lot. These laws 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 they acquired tax lot 3500 on December 31, 1969, and when they acquired tax lots 100 and 3900 on April 18, 1987.
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 on December 31, 1969, for tax lot 3500 and April 18, 1987, for tax lots 100 and 3900. On April 18, 1987, tax lots 100 and 3900 were subject to compliance with Goal 3 or 4, and OAR 660, division 5, or 6, as implemented through Baker County’s acknowledged T/G zone, and the applicable provisions 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 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.

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 September 26, 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. Comments received have been taken into account by the department in the issuance of this final report.