

**BALLOT MEASURE 37 (CHAPTER 1, OREGON LAWS 2005)
CLAIM FOR COMPENSATION**

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

June 29, 2005

STATE CLAIM NUMBER: M119181

NAME OF CLAIMANTS: George I. Hansen
Earlene L. Hansen
Kendall G. Hansen
Krystal D. Hansen-Kirsten
Michelle L. Hansen-Parcel
Jeffery Parcel

MAILING ADDRESS: 19107 S. Cliffview Road
Oregon City, Oregon 97045

IDENTIFICATION OF PROPERTY: Township 2S, Range 2E, Section
13C (Tax lots 900, 901, 902, 903,
and 904)

Township 2S, Range 2E, Section
14D (Tax lots 2200 and 2201)
Clackamas County

DATE RECEIVED BY DAS: January 6, 2005

180-DAY DEADLINE: July 5, 2005

I. CLAIM

George and Earlene Hansen, Kendall Hansen, Krystal Hansen-Kirsten, and Michelle and Jeffery Parcel, the claimants, seek compensation in the amount of \$1,330,000 for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide and develop the subject property. The property includes 47.03 acres of land in several separate tax lots located approximately four miles east of Oregon City at the end of and on the west side of Forsythe Road, on the north side of Cliffview Road. (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 laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to the claimants to allow each of them to divide and develop the properties for residential use to the extent those uses were permitted at the time each of the claimants acquired an interest in the subject properties: Statewide Planning Goal 4 (Forest Lands), Goal 14 (Urbanization), ORS 215.705 to 215.755 and 215.780, and OAR 660, Divisions 4 and 6, and except for ORS 215.730 and those provisions of Goal 4 and its implementing rules (OAR 660, Division 6) relating to siting standards for dwellings for the protection of public health and safety. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 15, 2005, 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, evidence, or information were received in response to the 10-day notice.

IV. TIMELINESS OF CLAIM

Requirement

Ballot Measure 37, Section 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 the measure (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 the measure (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 January 6, 2005, for processing under OAR 125, Division 145. On April 25, 2005, DAS received supplemental information from the claimant, including a completed State Measure 37 form and additional information on ownerships of the property subject to this claim.

The claim identifies as the basis for the claim, Clackamas County's "RRFF-5 and Timber District" enacted "some time after 2/10/67" that restricts the use of the property. Supplemental information provided by the claimants identifies ORS 215, HB 3661 (1993), and OAR 660, Divisions 4 and 6, that restrict the use of the property that is the subject of the claim. Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37 are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

Conclusions

The claim has been submitted within two years of December 2, 2004, the effective date of Measure 37, based on land use regulations enacted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

Ballot Measure 37 provides for payment of compensation or relief from specific laws for "owners" as that term is defined in the Measure. Ballot Measure 37, Section 11(C) defines "owner" as "the present owner of the property, or any interest therein."

Findings of Fact

According to the information provided in the claim, the subject property has been owned by the claimant, George Hansen, "and/or a family member (as that term is defined in Ballot Measure 37 since 1961, at which time the property was unzoned." Additional information on the Hansens' family ownership was provided in supplemental information received by DAS from the claimant on April 25, 2005. (See the department's claim file.)

To substantiate the family's ownership, a warranty deed was provided by the claimants that shows that *Lot 17* (now Tax Lots 2200 and 2201), *Lot 27* (now Tax Lots 902 and 903), *Lot 28* (now Tax Lot 900), *Lot 31* (now Tax Lots 901) and *Lot 32* (now Tax Lot 904) of the plat "*Outlook*" were transferred to David and Earlene L. Warren on May 29, 1961 (Deed Records Book 587 Page 507).

On January 28, 1964, an undivided one-half interest in each of the tax lots was transferred from Earlene L. Hansen (formerly Warren) to George Hansen (Deed Records Book 642 Page 732).

Since 1998, George and Earlene Hansen have been deeding interests in some of the properties to family members. The following table shows the earliest date, by tax lot, that each of the current owners acquired an interest in the subject property:

Property Subject to Claim	Current Owners and Current Interest (%) in the Property	Earliest Date Current Owners Acquired Interest in Property	Clackamas County Deed Record
Tax Lot 900 (Lot 28, Outlook)	George Hansen (100%)	1964 ¹	642 732; 2002-099792
Tax Lot 901 (Lot 31)	Earlene Hansen (100%)	1964	642 732; 2002-099793
Tax Lot 904 (Lot 32)	George & Earlene Hansen (100%)	1964	642 732
Tax Lot 2200 (W ½ Lot 17) (Parcel 1, 1998-63)	Jeffery & Michelle Parcel ² (100%)	May 4, 1999	99-042230 & 99-042230
Tax Lot 2201 (E ½ Lot 17) (Parcel 2, 1998-63)	George & Earlene (36%), Krystal Hansen-Kirsten (56%), & Kendall Hansen (8%)	George & Earlene in 1964; Krystal in 1999; and Kendall in 1998	642 732; 99-042228 & 99-042229; and 00-006508 & 00-006509
Tax Lot 902 (W ½ Lot 27) (Parcel 1, 1999-90)	George & Earlene (16%) & Kendall Hansen (84%) ³	George & Earlene in 1964; and Kendall in 2004	642 732; and 05-005006
Tax Lot 903 (E ½ Lot 27) (Parcel 2, 1999-90)	George & Earlene (36%) & Kendall Hansen (64%)	George & Earlene in 1964; and Kendall in 1999	642 732; and 00-006506 & 00-006507

(Source: Supplemental Claim File, April 27, 2005; Clackamas County Assessor's Office; and facsimiles forwarded to the department from the claimants, dated May 4, 6, 11, 12 and 13, 2005).

George and Earlene Hansen, their son, Kendall Hansen, and daughter, Krystal Hansen-Kirsten, are the current owners of Tax Lots 902, 903 and 2201. George and Earlene have had an interest in these tax lots since 1964. Kendall acquired

¹ Although 1964 is used here as the date family members (George and Earlene) acquired an interest in the property, the claimant and the department recognize that Earlene Hansen's (formerly Warren) interest in the property dates back to 1961. Because no state laws applying to the property changed between 1961 and 1964, the 1964 date is used throughout the report as the date the Hansens acquired the property.

² Jeffrey Parcel jointly acquired Tax Lot 2200 with Michelle Hansen-Parcel and is a current owner of that parcel. Although, Jeffrey Parcel did not sign the claim form, George Hansen has special power of attorney to deal with all the property, including the Parcel property, that is the subject of this claim.

³ George and Earlene Hansen's daughter, Roberta, and Thornton Robinson acquired an interest in the property in 1999. However, her brother, Kendall, acquired Roberta's and Thornton's interest in the property on November 24, 2004 (Deed Record 2005-005006). To substantiate George's and Earlene's continuous interest in the property, since 1964, the claimants provided the department with a corrected warranty deed (correcting Deed 2005-005006) to specifically set forth Kendall having 84% interest in the property, and them retaining a 16% interest in the property that they acquired in 1964.

an interest in Tax Lot 2201 on December 31, 1998; an interest in Tax Lot 903 on December 29, 1999, and an interest in Tax Lot 902 on November 24, 2004. Krystal acquired an interest in Tax Lot 2201 on December 29, 1999.

Michelle and her husband, Jeffery Parcel, acquired fee title to Tax Lot 2200 on July 23, 2000, but had an interest in this tax lot (along with George & Earlene Hansen) since 1999.

George & Earlene Hansen have owned Tax Lots 900, 901 and 904 since 1964. In 2002, George Hansen deeded his interest in Tax Lot 901 to Earlene Hansen, and Earlene Hansen deeded her interest in Tax Lot 900 to George Hansen. Both are the current owners of Tax Lot 904.

To verify the current ownerships, property tax statements for 2004-2005 were provided by the claimants for the seven tax lots that are the subject of this claim. The Clackamas County tax statements show George & Earlene Hansen and Jeffery & Michelle Parcel as current owners, although they do not show that Kendall and Krystal have partial interests in Tax Lots 2201, 902 and 903. However, the information provided by the claimants substantiates the family members' ownership in the subject properties.

Conclusions

George & Earlene Hansen are "owners" of Tax Lots 900, 901 and 904, and are "owners" having interest in Tax Lots 2201, 902 and 903, as that term is defined by Section 11(C) of Ballot Measure 37. Kendall Hansen is an "owner" having interest in Tax Lots 2201, 902 and 903, and Krystal Hansen-Kristen is an "owner" having interest in Tax Lot 2201, as that term is defined by Section 11(C) of Ballot Measure 37.

Michelle and Jeffery Parcel are "owners" of Tax Lot 2200, as that term is defined by Section 11(C) of Ballot Measure 37.

2. The Laws that Are the Basis for the Claim

In order to establish a valid claim, Section 1 of Ballot Measure 37 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 Fact

The claim states that as an alternative to compensation, a waiver of the regulations will allow the property to be put to the following use:

"Single-family residential, similar to neighbors, which homes are located on sites ranging from 30,000 square feet and one and two-acres sites similar to Rural Area Single-Family Residential 1 Districts."

As the basis of the claim, the claim identifies “OAR 660, Division 4,” applicable to the parcels zoned Rural Residential, Farm Forest (RRFF-5), which restricts lot size to five acres for a single-family dwelling, and “ORS 215 and OAR 660, Division 6,” applicable to the parcels zoned Timber District (TBR), which restricts lot size to 80 acres for a single-family dwelling. Tax Lots 900 and 901 (about 20-acres) are planned and zoned for forest uses under Clackamas County’s TBR Zone. Tax Lots 902, 903, 904, 2200 and 2201 are planned and zoned for rural residential uses under the county’s RRFF-5 Zone.

Statewide Planning Goal 4, (Forest Lands) (OAR 660-015-0000(4)), and laws applicable to land zoned for forest use under ORS 215, including ORS 215.705 to 215.755 and 215.780, and OAR 660, Division 6, restrict the right of an owner to divide the property for the purpose of sale and residential use. Goal 4 became effective on January 25, 1975, and required forest land, as defined by the Goal, to be zoned for forest use. (See citations to statutory and rule history under OAR 660-015-0000(4).) The forest land administrative rule (OAR 660, Division 6) became effective September 1, 1982 and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Or Laws 1993) and were adopted into OAR 660-006-0026 and 0027 on March 1, 1994. (See citations to rule history under OAR 660-015-0000(4).)

Together, ORS 215.705 to 215.755 and 215.780, and OAR 660-006-0026 and 0027 establish an 80-acre minimum lot size for the creation of a new parcel in a forest zone and also establish the standards for dwellings in forest zones under Statewide Planning Goal 4. The Clackamas County Timber District (TBR) is a forest zone, and its zoning standards are based on the standards contained in Statewide Planning Goal 4 and OAR 660, Division 6.

The Land Conservation and Development Commission acknowledged Clackamas County’s comprehensive plan and land use regulations to be in compliance with the Statewide Planning Goal 4 by order dated December 31, 1981. (See the department’s October 23, 1981 Staff Report, pages 26 thru 28). The Clackamas County comprehensive plan designates Tax Lots 900 and 901 as forestland in compliance with Statewide Planning Goal 4. Further, these tax lots are “forest land” as defined under Statewide Goal 4 because they are composed of forest soils that have a woodland suitability site index of 140 and 145 for Douglas-fir.⁴

The portion of the property zoned Clackamas County’s RRFF-5 is subject to a five acre minimum for the creation of new parcels. The five tax lots zoned RRFF-5 cannot be further divided because they are each already less than 10 acres in size.

⁴ Bornstedt silt loam, site index 145 for Douglas-fir (8B-0 to 8 percent slopes and 8C-8 to 15 percent slopes) and Xerohrepts and Haploxerolls, very steep (92F) site index 140 for Douglas-fir (Soil Survey of Clackamas County Oregon, property located on Sheet #7. Soil map units for 8B, 8C and 92F found on pages 23, 24, 113 and 114, and Table 6).

As a result of a 1986 Oregon Supreme Court decision, in 2000 the Commission amended Goal 14 (Urbanization) and adopted OAR 660-004-0040, which became effective on October 4, 2000.⁵ The rule provides that after October 4, 2000, a county minimum lot size in a rural residential area (including the parcels subject to this claim that are zoned RRFF-5 by Clackamas County) shall not be amended to allow a smaller minimum lot size without taking an exception to Goal 14 (OAR 660-004-0040(6)). This rule would not allow the subject parcels zoned RRFF-5 to be divided without an exception to Goal 14.

Conclusions

The minimum lot size and dwelling standards established by Statewide Planning Goal 4 and OAR 660-006-0026 and 0027, and the provisions of ORS 215, were all adopted after George and Earlene Hansen acquired an interest in the subject properties in 1964 and do not allow the division of the portion of property that is zoned TBR into parcels less than 80 acres in size or the approval of dwellings on 10-acre parcels.

Goal 14 and OAR 660-04-0040, applicable to tax lots zoned RRFF-5, restrict the use of those properties, and became effective on October 4, 2000, after George and Earlene Hansen acquired Tax Lots 2201, 902, 903 and 904 (formerly Lots 17, 27 and 32 of Outlook) in 1964. These laws also became effective after Michelle and Jeffery Parcel acquired interest in Tax Lot 2200 on May 4, 1999, and after they acquired fee title to the property on July 26, 2000. These laws also became effective after Kendall Hansen acquired interests in Tax Lot 2001 on December 31, 1998 and in Tax Lot 903 on December 29, 1999, and after Krystal Hansen-Kirsten acquired her interest in Tax Lot 2201 on December 29, 1999. These laws restrict the uses of these properties and became effective after the parents and the three children acquired interest in the property.

Kendall Hansen acquired interest in Tax Lot 902 on November 24, 2004, which is after the amendments to Goal 14 and OAR 660-004-0040 took effect on October 4, 2000.

Except for the provisions of ORS 92, which generally were in effect when George and Earlene Hansen acquired the property, Statewide Planning Goals 4 and 14, ORS 215.705 to 215.755 and 215.780, OAR 660-004-0040, and OAR 660, Division 6 were adopted since 1964, and restrict the use of the property relative to the uses permitted when George and Earlene Hansen acquired the property in 1964. Land use laws enacted on October 4, 2000, specifically Goal 14 and OAR 660-004-0040, restrict the use of Tax Lot 2200 relative to the uses permitted when: Michelle and Jeffery Parcel acquired interest in the property on May 4, 1999; Krystal Hansen-Kirsten acquired interest in Tax Lot 2201 on December 29, 1999; and Kendall Hansen acquired interest in Tax Lot 2201 on December 31, 1998 and in Tax Lot 903 on December 29, 1999. However, these land use laws were in effect when Kendall Hansen acquired his interest in Tax Lot 902 on November 24, 2004.

⁵ *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or App 447 (1986).

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any law(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 asserts that the fair market value of the subject property has been reduced and that the compensation due is \$1,330,000. The claimants state that the property has a current fair market value of \$1,000,000, and the fair market value without “down zoning” is \$2,330,000. The claimants have provided no further explanation or documentation as to how that amount was determined.

Conclusions

As explained in section V.(1) of this report, the current owners, George and Earlene Hansen, Michelle and Jeffrey Parcel, Kendall Hansen, and Krystal Hansen-Kristen, are due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value.

Without an appraisal based on the value of the desired development or other explanation, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that there has been some reduction in the fair market value of the subject property as a result of land use regulations enforced by the Commission or the department.

4. Exemptions under Section 3 of Measure 37

Ballot Measure 37 does not apply to certain laws. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

Findings of Fact

The claim includes a specific reference to particular County ordinances and statutory and rule provisions that restrict the use of the property relative to what would have been permitted in 1964 when the property was acquired. These provisions are in the Clackamas County Timber District (TBR) as required by Statewide Planning Goal 4 (Forest Lands), ORS 215 and OAR 660, Division 6 and the Rural Residential (RRFF-5) district as required by Goal 14 and OAR 660-004-0040. Most laws that qualify as “land use regulations” under the Measure were adopted after 1964, with the exception of some subdivision and partitioning laws in what is now ORS 92.

While not directly raised by the claimant, the department notes that ORS 215.730 and OAR 660, Division 6 include standards for siting dwellings in forest zones. This

provision includes fire protection standards for dwellings and for surrounding forestlands. Section 3 (B) of Measure 37 specifically exempts regulations “restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes...” Siting standards for dwellings in forest zones in ORS 215.730 and in Goal 4 and its implementing rules (OAR 660, Division 6) are exempt under subsection (3) of Measure 37.

Conclusions

Goal 4 and Goal 14, ORS 215, and OAR 660-004-0040 and OAR 660, Division 6 are the specific state land use laws that are the basis for the claim. These goal, statutory and rule restrictions on residential development and use of forest and rural residential lands apply to the owner’s anticipated use of the property, and, for the most part these laws would not come under any of the exemptions in Measure 37.

The siting requirements of ORS 215.730, Goal 4 and its implementing rules related to dwelling siting standards based on health and safety will continue to apply. There may be other specific laws that continue to apply under one or more of the exemptions in the Measure or because they are laws that are not covered by the Measure to begin with.

VI. FORM OF RELIEF

Section 1 of Measure 37 provides for payment of compensation to an owner of private real property if the Commission or department has enforced a law that restricts 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 a law 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 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 conclusion set forth in this report, laws enforced by the Commission or the department restrict the division of the subject property into parcels or lots, and the use of the property for residential purposes. The claimants cannot create the desired 30,000 square foot, one and two-acre lots out of the subject 47.03-acre property, and sell or develop those lots for residential use. The laws enforced by the Commission or department reduce the fair market value of the property to some extent. The claim asserts this amount to be \$1,330,000. However, because the claim does not provide a specific explanation for how the specified restrictions reduce the fair market value of the property, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of one or more land use regulations to allow the current owners a use permitted at the time they acquired an interest in the properties that are the subject of this claim, as follows:

1. To allow George Hansen to use Tax Lots 900 for a use permitted at the time he acquired an interest in the property on January 28, 1964;
2. To allow Earlene Hansen to use Tax Lot 901 for a use permitted at the time she acquired an interest in the property on January 28, 1964;
3. To allow George Hansen or Earlene Hansen to use Tax Lot 904 for a use permitted at the time they acquired an interest in the property on January 28, 1964;
4. To allow Michelle and Jeffery Parcel to use Tax Lot 2200 for a use permitted at the time they acquired an interest in the property on May 4, 1999;
5. To allow George Hansen or Earlene Hansen to use Tax Lot 2201 for a use permitted at the time they acquired an interest in the property on January 28, 1964;
6. To allow Kendall Hansen to use Tax Lot 2201 for a use permitted at the time he acquired an interest in the property on December 31, 1998;
7. To allow Krystal Hansen-Kirsten to use Tax Lot 2201 for a use permitted at the time she acquired an interest in the property on December 29, 1999;
8. To allow George and Earlene Hansen to use Tax Lot 902 for a use permitted at the time they acquired an interest in the property on January 28, 1964;
9. To allow Kendall Hansen to use Tax Lot 902 for a use permitted at the time he acquired an interest in the property on November 24, 2004;⁶
10. To allow George or Earlene Hansen to use Tax Lot 903 for a use permitted at the time they acquired an interest in the property on January 28, 1964; and
11. To allow Kendall Hansen to use Tax Lot 903 for a use permitted at the time he acquired an interest in the property on December 29, 1999.

⁶ The department recognizes that the waiver granted solely to Kendall Hansen for Tax Lot 902 does not provided him with his desired use of the property. Such use of the property will require the waiver that is being provided to both him and his parents.

Conclusions

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to George and Earlene Hansen's, Kendall Hansen's and Krystal Hansen-Kirsten's division and residential development on Tax Lots 900, 901, 902, 903, 904 and 2201: Statewide Planning Goal 4 (Forest Lands), the 2000 amendments to Statewide Planning Goal 14 (Urbanization), ORS 215.705 to 215.755 and 215.780, OAR 660-004-0040, and OAR 660, Division 6; and will not apply the following laws to Michelle and Jeffery Parcel's division and residential development of Tax Lot 2200: The 2000 amendments to Goal 14 and OAR 660-004-0040. However, the state will apply the 2000 amendments to Goal 14 and OAR 660-004-0040 to Kendall Hansen's use of Tax Lot 902.
2. The action by the State of Oregon provides the state's authorization to the claimants to divide and establish residential dwellings on the subject property, subject to those standards in effect when they acquired their interests in the tax lots that make up the subject property. Specifically, George and Earlene Hansen are authorized to divide and develop Tax Lots 900, 901, 902, 903, 904 and 2201, subject to the laws in effect in 1964. In addition, with regard to the two tax lots zoned for forest uses (Tax Lots 900 and 901) that make up a portion of the property subject to this claim, ORS 215.730 and those current provisions of Goal 4 relating to siting standards for dwellings for the protection of the public health and safety are also exempt under subsection (3) of Measure 37 and will continue to apply to the claimants' use of these two tax lots.

Kendall Hansen is authorized to divide and develop Tax Lot 2201 subject to the laws in effect on December 31, 1998; Kendall Hansen's use of Tax Lot 903 is subject to laws in effect on December 29, 1999; and Kendall Hansen's use of Tax Lot 902 is subject to laws in effect in 2004. Krystal Hansen-Kirsten is authorized to divide and develop Tax Lot 2201, subject to laws in effect on December 29, 1999. The department acknowledges that this relief does not allow Kendall Hansen to independently use Tax Lot 902 as requested in this claim.

Michelle and Jeffery Parcel are authorized to divide and develop Tax Lot 2200, subject to the laws in effect on May 4, 1999.

3. To the extent that any law, order, deed, agreement or other legally-enforceable public or private requirement provides that the 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 215.412 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

4. Any use of the property by any of 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 enforced by a public entity other than the Commission or the department; and (c) those laws not subject to Measure 37 including, without limitation, those laws excepted under section (3) of the measure.

5. Without limiting the generality of the foregoing terms and conditions, in order for any of the claimants to use the property, it may be necessary for them to obtain a decision under Measure 37 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 any of the claimants from the necessity of obtaining a decision under Measure 37 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on June 15, 2005. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.