

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

August 9, 2005

STATE CLAIM NUMBER: M119726

NAME OF CLAIMANTS: Lowell Patton
Pacific Western Company

MAILING ADDRESS: Post Office Box 85
Carver, Oregon 97015

IDENTIFICATION OF PROPERTY: Township 13S, Range 11W, Section 7
Tax Lot 100 (formerly Tax Lot 1900)
Lincoln County

Township 13S, Range 11W, Section 7
Tax Lot 200 (formerly part of Tax Lot 1900)
Lincoln County

Township 13S, Range 12W, Section 12
Tax Lot 3600 (formerly Tax Lot 1901)
Lincoln County

OTHER CONTACT INFORMATION: William C. Cox
0244 Southwest California Street
Portland, Oregon 97219

DATE RECEIVED BY DAS: February 11, 2005

180-DAY DEADLINE: August 10, 2005

I. CLAIM

The claimants, Lowell Patton, the owner of Tax Lots 100 and 3600 and Pacific Western Company, the owner of Tax Lot 200, seek compensation in the amount of \$12,600,000 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 subdivide the property. The 24.49 -acre property is located in Lincoln County, approximately 1.7 miles north of Alsea Bay. (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 lieu of compensation under Measure 37, the State of Oregon will not apply the following law to the Claimants' division of the properties or to the establishment of dwellings on it: OAR 660-004-0040. This rule will not apply to the Claimants' use of the properties only to the extent that OAR 660-004-0040 is not exempt under subsections 3(A) to 3(D) of Measure 37, and only to the extent necessary to allow Claimant Lowell Patton, a use of Tax Lot 100 permitted when he acquired it on October 5, 1988, and a use of Tax Lot 3600 permitted when he acquired it on December 15, 1989, and to allow Claimant Pacific Western Company a use of Tax Lot 200 permitted when the corporation acquired it on August 19, 1993. The department acknowledges that this relief will not allow Lowell Patton or Pacific Western Company to use the properties in the manner that appears to be contemplated in their claim (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On February 28, 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, there were 49 written comments, evidence or information received by DAS in response to the 10-day notice. The comments were not specific to the criteria required under Measure 37 to be used in the department's review of this claim. Because no funds have been made available for payment of compensation, comments regarding the possible impact of the proposed or intended development of the Claimants' properties are not relevant to the evaluation and determination of the Claimants' Ballot Measure 37 claim. (See comment letters in the department's claim file.)

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

The claim was submitted to the DAS on February 11, 2005, for processing under OAR 125, division 145. The claim identifies OAR 660-14-0040, and Goal 5 and its implementing rules as the state land use regulations that are the basis for 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 adopted 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. Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

The claim involves two separate properties with different ownership histories. The larger of the two properties is approximately 23.5 acres described by the documents detailing the ownership as Lincoln County Assessors Property ID # R275446, Tax Lots 100 and 200 (Section 7, Township 13 S, Range 11 W, and Section 12, Township 13 S, Range 12 W).¹ Mr. Lowell Patton acquired Tax Lot 100 from John B. Franzwa, Inc., as documented by the Bargain and Sale Deed dated October 5, 1988. This transaction established the date the claimant, Lowell Patton, became the present owner of the property.

Claimant Patton subsequently sold a 1.01-acre portion of Tax Lot 100 (formerly Tax Lot 1900) to Pacific Western Co. The county assessor has assigned Tax Lot 200 to this portion of the property. The sale to Pacific Western Co. occurred on August 19, 1993.

¹ According to materials submitted with the claim, on December 21, 1973, a corporation owned by Mr. Patton, L.E.D., merged with Guy Roberts Lumber Company to form Guy Roberts Lumber Co. Inc. The property was sold by the Guy Roberts Lumber Company Inc. to Georgia Pacific Corporation on December 22, 1973. Oregon Lumber Export Company, which also was owned by Mr. Patton, acquired the property from the Georgia Pacific Corporation on July 6, 1976. The Oregon Lumber Export Company filed for bankruptcy. The filing of the bankruptcy petition resulted in the transfer of all assets of Oregon Lumber Export Company to the bankruptcy estate. Any interest of Mr. Patton, or a family member of Mr. Patton, was extinguished at that time. Mr. Patton acquired an interest in the property by a deed from the bankruptcy estate on November 15, 1988.

The second property included in the claim also contains 1.01 acres, and is described as Lincoln County Assessors ID # 474368, Tax Lot 3600 (Section 7, Township 13 S, Range 11 W). The claim documents that Lowell Patton acquired this property on December 15, 1989.

Conclusions

Claimant Lowell Patton is an “owner” of Tax Lot 100 (formerly Tax Lot 1900) as of October 5, 1988, and Tax Lot 3600 (formerly Tax Lot 1901) as of December 15, 1989. Pacific Western Company is an owner of Tax Lot 200 (part of former Tax Lot 1900), as of August 19, 1993. “Owner” is defined for purposes of this review by Section 11(C) of Ballot Measure 37.

2. The Laws that are the Basis for this Claim

In order to establish a valid claim, Section (1) of Ballot Measure 37 requires, in part, that a law must restrict the Claimants’ use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the Claimants or a family member acquired the property.

Findings of Fact

The claim states that the subject property “was zoned RR 1 / 2 at the time of purchase. It is presently zoned RR -2.” The RR 1 / 2 zoning, which may have allowed the original property to be divided into one-acre lots, was part of the Lincoln County Comprehensive Plan and Zoning Ordinance when it was acknowledged by the Oregon Land Conservation and Development Commission on January 31, 1985.

The claim lists the following state land use regulations as restricting the use of the properties; OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas)²; Goal 5 (Natural Resources, Scenic and Historic Areas and Open Spaces) and the applicable implementing regulations OAR 660-16-0000 to 0020, 660-23-0000 to 0250. The claim also lists “All Statewide Planning Goals and administrative rules, statutes adopted and enforced since purchase of property by claimant”.³

OAR 660-004-0040, specifies how Goal 14 applies to rural lands in acknowledged exception areas plan for residential uses. As a result of a 1986 Supreme Court decision,⁴ the Commission amended Goal 14 (Urbanization) and adopted OAR 660-004-0040 to clarify what level of

² The claim cites OAR 660-14-0040. The reference in the claim to OAR 660-014-0040 appears to be a typographical error. The Commission rule concerning the level of permissible residential development of rural residential lands is OAR 660-004-0040. The remainder of this report addresses that rule.

³ The Claimants’ attorney generally cites to all state land use regulations adopted and enforced since the purchase of the properties by the Claimants. Without some description of the Claimants’ intended use of the properties beyond the division of the properties into lots, it is not possible for the department to determine what state land use regulations may apply to the property, and which of these may be exempt under sections 3(A) through 3(E) of the measure.

⁴ *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or App 447 (1986).

residential density is permissible under Goal 14 on rural residential lands. The new land use regulation became effective on October 4, 2000. OAR 660-004-0040(5)(b)) specifies that until a local government amends its land use regulations, the minimum lot size requirement in a rural residential zone is two acres. OAR 660-004-0040(6) prevents a local government from allowing a smaller minimum lot size unless it takes an exception to Goal 14. Lincoln County has amended its land use regulations to a two-acre minimum to comply with OAR 660-004-0040, and as a result 0040(6) apply to prevent the county from reducing its minimum lot size.

It should be noted, however, that prior to the adoption of OAR 660-004-0040, the Oregon courts interpreted Statewide Planning Goal 14 to prevent rural residential densities at a level of one dwelling per acre under certain factual circumstances. As a general matter, the Commission adopted OAR 660-004-0040 to clarify the application of Goal 14, rather than to restrict residential use of rural exception lands. While it is not certain that the rule restricts the use of the Claimants' property relative to what was allowed when the Claimants became the present owner, the department concludes that it is more likely than not that the rule does so. This issue is further complicated by the fact that Lincoln County Zoning Code section 1.1381 (Coastal Shorelands) appears to allow land divisions on lands (within the county's coastal shoreland overlay) outside of urban growth boundaries only upon findings that such uses satisfy a need that cannot be accommodated at other upland locations or in urban or urbanizable areas. No evidence has been provided to demonstrate that this showing can be made and, as a result, it appears that the Claimants' intended use likely would have required some form of plan or zoning amendment which would have had the result that Goal 14 would have applied directly to the use of the property. Nevertheless, based on the fact that OAR 660-004-0040 was adopted after Claimants acquired the properties, the department concludes that it is more likely than not that the rule restricts the Claimants' use of the properties.

Goal 5 (Natural Resources, Scenic and Historic Areas and Open Spaces), and the applicable implementing regulations in OAR 660-16-0000 to 0020 and OAR 660-23-0000 to 0250, apply to significant resource sites that have been inventoried by Lincoln County. The Lincoln County Goal 5 inventory does not currently identify any significant resources located on the subject properties. Thus, Goal 5 and the implementing regulations do not apply to the subject properties and do not restrict their use.

Other State Land Use Regulations. The properties are subject to statewide planning Goal 17 (Coastal Shorelands) requirements to identify and protect significant coastal shoreland resources, but it is not clear that this Goal restricts the use of the property. This requirement is implemented by Lincoln County through a zoning overlay that includes areas identified as meeting the criteria under LCC 1.0095 Coastal Shoreland Policies⁵, that has applied to the

⁵ 1.0095 Coastal Shoreland Policies

- (1) Lincoln County shall establish a Coastal Shorelands Boundary and determine appropriate uses within.
- (2) The shoreland boundary shall be defined to include areas as follows:
 - (a) Lands which are directly affected by hydraulic action of the coastal water body, including the 100 year floodplains and lands which limit and control hydraulic action;
 - (b) Areas of geologic instability which may affect or may be affected by adjacent coastal waters;
 - (c) Identified headlands;
 - (d) Identified areas of exceptional scenic or aesthetic qualities including lands within the state park system; and
 - (e) Identified areas of significant shoreland and wetland biological habitats.

property since 1985. Lincoln County applies specific land use designations and standards that are consistent with the protection of natural values within those areas included the shoreland overlay zone in the LCC 1.1381 (5) of the Coastal Shorelands (CS) Overlay Zone.⁶ The claim does not identify Goal 17 and, until more information is provided concerning the characteristics of the Claimants' intended use(s) of the property, the department is unable to determine whether this land use regulation restricts the use of Claimants' properties.

The property also includes areas subject to Statewide Planning Goal 18 (Beaches) and Dunes requirements that are implemented by Lincoln County under LCC 1.0105.⁷ The Goal 18 requirements that are reflected in the Lincoln County's ordinance are designed to regulate development within beach and dune system adjacent to the ocean shore. As with Goal 17, until more information is provided concerning the characteristics of the Claimants' intended use(s) of the property, the department is unable to determine whether this land use regulation restricts the use of Claimants' properties.

Conclusions

OAR 660-004-0040. Based on the standard for land divisions applicable to his property when Mr. Lowell Patton acquired it in 1988 and 1989, and to Pacific Western Company when it acquired Tax Lot 200 in 1993, it is possible that the subject properties could have been divided into one-acre lots, which is more than the current standards and the uses authorized under OAR 660-004-0040(5) (b) and OAR 660-004-0040(7)(a) will permit. The provisions of Goal 14, however, will continue to apply to the subject properties and, as a result, the use of the

⁶ (4) For shorelands identified in the inventory as major marshes, significant wildlife habitat, headlands, areas having exceptional aesthetic resources or historic and archaeological sites, Lincoln County shall adopt land use designations and standards which are consistent with the protection of natural values.

(5) Shorelands in rural areas other than those identified in Policy 4, above, shall be designated as appropriate for:

- (a) Farm uses;
- (b) Forest uses;
- (c) Private and public water-dependent recreation developments;
- (d) Aquaculture, where consistent with the adjacent estuarine management unit;
- (e) Water-dependent and water-related commercial and industrial uses upon a finding that such uses satisfy a need which cannot be accommodated on shore lands in urban and urbanizable areas;
- (f) Subdivisions and major and minor partitions upon a finding that such uses satisfy a need that cannot be accommodated at other upland locations or in urban or urbanizable areas and are compatible with the objectives of protecting wildlife habitat and riparian vegetation;
- (g) Single-family residences on existing lots when compatible with objectives of protecting wildlife habitat and riparian vegetation.

⁷ 1.0100 Beaches and Dunes Goals

Beaches and dunes goals:

- (1) To protect, conserve and, where appropriate, restore, the beaches and dunes of Lincoln County.
- (2) To ensure that development will be designed to minimize adverse environmental effects.
- (3) To ensure that development will be adequately protected from any geological hazards, wind erosion, undercutting, ocean flooding and storm waves.

property may not be restricted relative to how it could have been used when the Claimants acquired it in 1988, 1989, and 1993.

Goal 5 (Natural Resources, Scenic and Historic Areas and Open Spaces), and the applicable implementing OAR 660-16-0000 to 0020, 660-23-0000 to 0250, apply to specific significant resource sites that have been inventoried by Lincoln County. The Lincoln County Goal 5 inventory does not currently identify any significant resources as being located on the subject property. Thus, Goal 5 and the implementing administrative rules listed above do not apply to the subject property, and therefore have not restricted the use of the property or reduced its value.

Other State Land Use Regulations. The property is subject to Statewide Planning Goal 17 (Coastal Shorelands) requirements to identify and protect significant coastal shoreland resources. This requirement is implemented by Lincoln County through a zoning overlay that includes areas identified as meeting the criteria under LCC 1.381 Coastal Shoreland Overlay Zone was adopted in 1985 and that applied to the subject properties before they were acquired in 1988 (Tax Lot 100), 1989 (Tax Lot 3600) and 1993 (Tax Lot 200). The property also includes areas subject to Statewide Planning Goal 18 (Beaches and Dunes) requirements that are primarily designed “To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.” These requirements are implemented by Lincoln County under LCC 1.0100 and LC 1.0105. Goal 18 and the implementing county policies and land use ordinances applied to the property before it was acquired under the current ownership in 1988, 1989 and 1993. It is not possible to determine whether Goal 17 or Goal 18 restrict the Claimants’ use(s) of these properties without additional information concerning the characteristics of the Claimants’ desired use(s).

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, Section (1) of Ballot Measure 37 requires that any laws 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

According to the Claimants, the down zoning resulted in a reduction in the number of parcels that could be divided from the lot from 60 half-acre parcels, to 15 two-acre parcels. The Claimants calculate their loss in value as the \$12,600,000 difference between the market value of the 15 two-acre lots at \$400,000 each, for a total of \$6,000,000, and 60 half-acre lots at \$300,000 each, for a total of \$18,600,000. The claim asserts that the values given for the respective lot sizes are the current fair market value for lots of those dimensions for that area.⁸ The department notes that the highest possible density that the Claimants could achieve is one acre lots and that the density may be substantially less as a result of the development constraints that appear to be

⁸ There is a discrepancy between the total acreage listed by the claimants, 31.38-acres and the area of the properties listed. The properties referenced in the claim, and identified on the maps submitted with the claim documentation, indicate the two parcels that are subject to the claim are 23.49 acres (Tax Lot 100 and Tax Lot 200) and 1.01-acres (Tax Lot 3600). The claim uses a calculation of reduction in value based on the division of a 31.38-acre area.

present on the property. Nevertheless, based on the department's record, it appears more likely than not that there has been some diminution in value as a result of OAR 660-004-0040.

Conclusions

As explained in section V.(1) of this report, Lowell Patton is the current owner of Tax Lots 100 and 3600 and acquired the properties in 1988 and 1989, respectively. Pacific Western Company acquired Tax Lot 200 in 1993. Thus, under Ballot Measure 37, the Claimants are due compensation for land use laws that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in section V.(2) of this report, it is more likely than not that OAR 660-004-0040 restricts the use of the properties and as a result has resulted in some reduction in fair market value. However, without an appraisal or other documentation, 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 a land use regulation 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 state land use regulation that is the basis for this claim is OAR 660-004-0040, which is implemented by Lincoln County's RR -2 zone as applied to the under LCC 1.1345 (3) (a).

Statewide Planning Goals 14 (Urbanization) and 17 (Coastal Shorelands), as implemented by LCC 1.0095, and 18 (Beaches and Dunes) as implemented by LCC1.0105 are also subject to this claim. However, because they were adopted prior to the Claimants' acquisition of the properties in 1988, 1989 and 1993, are exempt under Section 3(E) of the Measure. In addition, Statewide Planning Goal 18 is designed to "To reduce the hazard to human life and property from natural or man-induced actions associated with these areas." The exemption provided by Measure 37 Section 3(B) specifies that Subsection (1) of the measure shall not apply to land use regulations restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations." The area within the subject property that is included in the Lincoln County beach and dune overlay is subject to ocean flooding.

Other exemptions, under subsections 3(A)-3(D) of Measure 37 also may apply, depending on the specific characteristics of the use(s) the Claimants carry out. Until the department knows the characteristics of the Claimants' use of the property, it is not able to make a final determination concerning all the laws that may apply, or concerning which of these laws may be exempt under section 3 of Measure 37. When the Claimants are ready to proceed with their use of the
When the Claimants are ready to proceed with their use of the

property, they should submit their plans to the state to verify what laws may apply to the use(s), and whether the exceptions will require that some or all of those laws continue to apply to the Claimants' use of the properties.

Conclusions

Those state land use regulations enacted before October 5, 1988 are exempt under section 3(E) of Ballot Measure 37 as they apply to the properties owned by Mr. Patton. These include: Statewide Planning Goal 14, Statewide Planning Goal 5 (and the implementing rules in OAR 660, division 16), and Statewide Planning Goals 17 and 18. Those state land use regulations enacted before October August 19, 1993 are exempt under section 3(E) of Ballot Measure 37 as they apply to the property owned by Pacific Western. These include: Statewide Planning Goal 14, Statewide Planning Goal 5 (and the implementing rules in division 16), and Statewide Planning Goals 17 and 18. Other laws and other exemptions, under subsections (A) -3(D) of Measure 37 also may apply, depending on the specific characteristics of the use(s) the Claimants carry out.

OAR 660-004-0040 is not exempt under subsection 3(E) of Measure 37, as it was enacted after the owners acquired the respective properties. Other exemptions may apply to this rule, however, and the department is not able to make a final determination on the other exemptions based on this record.

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 the department 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 the 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 conclusions set forth in this report OAR 660-004-0040 restricts the subdivision and development of housing of the subject properties. This restriction reduces the fair market value of the subject property to some extent. Until the Claimants propose a specific use of the property, the department is not able to determine whether the exemptions under section 3(A) to 3(D) of Measure 37 apply to OAR 660-004-0040.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Mr. Patton to use the subject property for a use permitted at the time he acquired Tax Lot 100 on October 5, 1988 and Tax Lot 3600 on December 15, 1989, and to allow Western Pacific Company to use Tax Lot 200 for a use permitted at the time the corporation acquired the property on August 19, 1993.

Conclusion

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 law to Mr. Patton's division of the properties or to the establishment of dwellings on it: OAR 660-004-0040. This rule will not apply to the Claimants' use of the properties only to the extent that OAR 660-004-0040 is not exempt under subsections 3(A) to 3(D) of Measure 37, and only to the extent necessary to allow Claimant Patton a use of the properties permitted when he acquired the properties.
2. The action by the State of Oregon provides the state's authorization to Mr. Patton to use his properties subject to the standards in effect on October 5, 1988 (Tax Lot 100), and December 15, 1989 (TL 3600) and the authorization to Western Pacific Company to use its property subject to the standards in effect on August 19, 1993 (Tax Lot 200). On those dates, the properties were subject to Statewide Planning Goal 14 (Urbanization), Goal 17 (Coastal Shorelands), and Goal 18 (Beaches and Dunes).
3. Provisions of Statewide Planning Goal 18 will also continue to apply to the properties in so far as the provisions are primarily designed "To reduce the hazard to human life and property from natural or man-induced actions associated with these areas." These requirements are implemented by Lincoln County under LCC 1.0100 and LC 1.0105.
4. 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.
5. Any use of the 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 Measure 37 including, without limitation, those laws exempted under Section (3) of the Measure.
6. Without limiting the generality of the foregoing terms and conditions, in order for the Claimants to use the property, it may be necessary for them to obtain a decision under Measure 37 from a state agency, 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 Measure 37 from a state or 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 July 13, 2005. 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.