

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. M118637
(BALLOT MEASURE 37) OF)	
Cory Seibert and Julia Seibert, CLAIMANTS)	

Claimants: Cory Seibert and Julia Seibert (the Claimants)

Property: Tax lot 1300, Township 8S, Range 6W, Section 24, Polk 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 the claimants' division of approximately 51 acres of the 77-acre property into 17, approximately three-acre parcels and development of a dwelling on each of those parcels, and to their development of the remainder of the property for a commercial use: applicable provisions of Statewide Planning Goals 3 and 4, ORS 215, and OAR 660 divisions 6 and 33 enacted after the claimants acquired their respective interests in the property. These land use laws will not apply to Julia Seibert's use of the property only to the extent necessary to allow her to use the property for the use described in this report, and only to the extent that use was permitted at the time she acquired the property on June 15, 1970, and is consistent with her current life estate. These land use laws will not apply to Cory Seibert's use of the property only to the extent necessary to allow him to use the property for the use described in this report, and only to the extent that use was permitted at the time he acquired the property on June 29, 1990.
2. The action by the State of Oregon provides the state's authorization to Julia Seibert to use the property subject to the standards in effect on June 15, 1970, consistent with her current life estate, and provides the state's authorization to Cory Seibert to use the property subject to the standards in effect on June 29, 1990. On the date, the property was subject to the County's acknowledged EFU and FF zones in accord with applicable provisions of Goals 3 and 4, and

OAR 660 divisions 5 and 6 then in effect, and to the applicable provisions of ORS 215 then in effect. The department acknowledges that the relief to which Cory Seibert is entitled under ORS 197.352 will not allow him to use the property in the manner set forth in this claim.

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 215.402 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 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 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 property by the claimants.

This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:

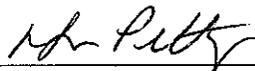
Lane Shetterly, Director



George Naughton, Deputy Director
DLCD

Dated this 29th day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 29th day of March, 2006.

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 197.352¹, 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."

¹ By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

**BALLOT MEASURE 37 (ORS 197.352)
CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation**

March 29, 2006

STATE CLAIM NUMBER: M118637

NAMES OF CLAIMANTS: Cory Seibert and Julia Seibert

MAILING ADDRESS: P.O. Box 982
Falls City, Oregon 97338

PROPERTY IDENTIFICATION: Township 8S, Range 6W, Section 24
Tax lot 1300
Polk County

DATE RECEIVED BY DAS: May 20, 2005

180-DAY DEADLINE: April 4, 2006¹

I. SUMMARY OF CLAIM

The claimants, Cory Seibert and Julia Seibert, seek compensation for the reduction in fair market value of \$2,510,000 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 approximately 51 acres of the 77-acre property into 17 approximately three-acre parcels, and to develop a residential dwelling on each of those parcels; and to use the remainder of the property for a commercial use. The property is located at 16300 Falls City Road, Dallas, in Polk 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 claimants' division and development of a portion of the property for residential use and development of the remainder of the property for a commercial use: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), Goal 4 (Forest Lands), ORS 215, and OAR 660

¹ This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Ballot Measure 37 was suspended during the pendency of the appeal of *MacPherson v. Dep't of Admin. Servs.*, 340 Or ___, 2006 Ore. LEXIS 104 (February 21, 2006).

divisions 6 and 33, enacted after each claimant acquired the property. These laws will not apply to Julia Seibert only to the extent necessary to allow her to use the property for the use described in this report, and only to the extent that use was permitted at the time she acquired an interest in the property on June 15, 1970, and is consistent with her current life estate interest in the property. These laws will not apply to Cory Seibert only to the extent necessary to allow him to use the property for the use described in this report, and only to the extent that use was permitted at the time he acquired his interest in the property on June 29, 1990. The department acknowledges that the relief to which Mr. Seibert is entitled under ORS 197.352 (Ballot Measure 37) will not allow him to use the property in a manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 26, 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, five comment letters were received in response to the 10-day notice.

Three of the comments do not address whether the claim meets the criteria for relief (compensation or waiver) under ORS 197.352. Comments concerning the effects a use of the property may have on surrounding areas generally are not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waiving a state law.

Two of the comments are relevant to when the claimants became the present owners of the property, and whether the restriction of the claimants' use of the property reduces the fair market value of the property and whether a state agency can waive a state law. The comments have been considered by the department in preparing this report. (See the comment letters in the department's claim file.)

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 Ballot 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 Ballot 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 May 20, 2005, for processing under OAR 125 division 145. The claim identifies the Polk County Timber (TC), Exclusive Farm Use (EFU) and Farm/Forest (FF) zones, acknowledged zoning districts under state law, as laws that restrict the use of the property and are the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of Ballot 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 Ballot Measure 37, based on land use regulations 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

Claimant Julia Seibert, the mother of the claimant Cory Seibert, first acquired an interest in the subject property on June 15, 1970 together with her husband Loren M. Seibert. On June 29, 1990, Loren and Julia Seibert conveyed the property to claimant Cory Seibert subject to the following reservation:

“Reserving, unto the grantors, for the term of their respective lives, the exclusive right to use, occupy and enjoy the income and possession of said real property.”

Polk County’s analysis of the claimants’ County ORS 197.352 claim, based on the County’s deed and tax records, verifies the claimants’ current ownership interests. (See deed copies in the department’s file).

Conclusions

Julia Seibert and Cory Seibert are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). Julia Seibert acquired an interest in the property on

June 15, 1970, and retains a life estate interest in the property as of June 29, 1990. Cory Seibert acquired an interest in the property on June 29, 1990. Julia Seibert is a "family member" of Cory Seibert as that term is defined by ORS 197.352(11)(A).

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.

Findings of Fact

The claim identifies the Polk County Timber Conservation (TC), Exclusive Farm Use (EFU) and Farm/Forest (FF) zones as laws that restrict the use of the property and are the basis for the claim. The subject property is zoned EFU and FF. The claim states that these zoning districts do not allow for the property to be divided and developed for residential and commercial use.

The claim is based, generally, on Polk County's current Exclusive Farm Use (EFU) and Farm/Forest (FF) zones and the applicable provisions of state law that require such zoning.

A 57-acre portion of the claimants' property is zoned EFU as required by Statewide Planning Goal 3, in accord with OAR 660 division 33 and ORS 215 because that part of the claimants' property is "agricultural land" as defined by Goal 3.² Goal 3 became effective on January 25, 1975, and required agricultural lands as defined by the Goal to be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284, 215.780 and OAR 660 division 33 as applied by Goal 3, do not allow the subject property to be divided into parcels less than 80 acres and establish standards for allowing the existing or any proposed parcels to have farm or non-farm dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone 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. Subsequent amendments

² The claimants' property is "agricultural land" because it is predominantly composed of NRCS (Natural Resources Conservation Service) Capability Class I-IV soils.

to comply with HB 3326 (Chapter 704, Oregon Laws 2001, and effective January 1, 2002,) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

ORS 215 allows a variety of agricultural and resource related commercial activities. Provisions regarding commercial activities in conjunction with farm use were added to ORS 215 in 1973, (Chapter 503 Or Laws 1973 (SB 101)) and became effective on October 5, 1973. Subsequent Legislative sessions have added provisions to ORS 215 regarding additional commercial activities.

A 20-acre portion of the claimants' property is zoned Farm/Forest (FF) which is a mixed agricultural and forestland zone also adopted to comply with Statewide Goal 4 (Forest Lands) and the implementing provisions of OAR 660-006-0050 (effective February 5, 1990,) and subsequently amended on March 1, 1994, to comply with the provisions of HB 3661 (Chapter 792, Or Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Statewide Goals 3 and 4, including a wide variety of resource related commercial uses, are allowed except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993. No information was provided to the department regarding the predominant use of the property on January 1, 1993. Depending on the predominant use on January 1, 1993, the property is subject to either the requirements for dwellings applicable under exclusive farm use zoning required by Statewide Goal 3 and OAR 660 division 33 or forest zone provisions required by Statewide Goal 4 and OAR 660 division 6. This includes the dwelling standards asserted by the claimants as restricting the use of the property. However, no analysis of whether any of the tax lots can be approved for a dwelling under the applicable farm or forest provisions has been provided.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones which implement the 80-acre minimum lot size specified in ORS 215.780. Under OAR 660-006-055, the claimants' property cannot be divided into parcels smaller than 80 acres as may have been possible under the County zones applied on June 29, 1990. However, no analysis of whether any of the tax lots can be divided for non-farm dwellings under ORS 215.263(4)(b) has been provided.

The Seibert family acquired the subject property in 1970, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. At that time, the subject property was not zoned by Polk County.

Conclusions

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands) and the provisions applicable to land zoned EFU and FF in ORS 215 and OAR 660 divisions 6 and 33 were all enacted after Ms. Seibert acquired the subject property in 1970, and do not allow the development of the

property for residential or commercial use, thereby restricting the use of the property relative to the uses allowed when the Seibert family acquired the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimants have identified. There may be other laws that currently apply to the claimants' use of the property, and that may continue to 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 what laws apply to a use of property until there is a specific proposal for that use. 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.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that any land use regulation 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 alleges that current land use regulations have reduced the value of the entire subject 57-acre property by \$2,510,000. Based on area comparable sales, the claim asserts that the existing 20 acres zoned FF is worth \$150,000, and if divided into six, approximately three-acre parcels, would be worth approximately \$480,000. Thus, the claim alleges, current land use regulations have reduced the value of this portion of the property by \$330,000. Based on area comparable sales, the claim asserts that the existing 57-acres zoned EFU is worth \$350,000 and if 24 acres of that acreage is put to "commercial use" and the remaining 33 acres is divided into 11 approximately three-acre parcels, it would be worth approximately \$2,530,000. Thus, the claim alleges, current land use regulations have reduced the value of this portion of the property by \$2,180,000.

No appraisal or other substantiating documentation was provided to substantiate the dollar amount that the claimants' claim for compensation.

Conclusions

As explained in Section V.(1) of this report, Julia Seibert and Cory Seibert are current owners of the subject property. The Seibert family acquired the property in 1970. Under Ballot ORS 197.352, the Seiberts are due compensation for land use regulations 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, laws adopted since the claimants' family acquired the property in 1970, restrict the claimants' ability to divide the property and develop it for residential or some commercial uses. The claimants estimate the reduction in value due to the restrictions to be \$2,510,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount that 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 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 land use regulations that restrict the use of the property relative to what would have been allowed in 1970 when the Seibert family acquired the property. These provisions include Statewide Planning Goal 3 (Agricultural Lands), Goal 4 (Forest Lands), Goal 14 (Urbanization), and applicable provisions of ORS 215 and OAR 660 divisions 06 and 33, which Polk County has implemented through its EFU and FF zones. All of these laws were enacted after the Seibert family acquired the property in 1970 and, therefore, are not exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimants' family acquired the property.

The department notes that ORS 215.730 and OAR 660 division 6 include standards for the siting of dwellings in forest zones. These provisions include fire protection for dwellings and for surrounding forest lands. 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..." 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 ORS 197.352(3).

Conclusions

Without a specific development proposal for the property, it is not possible for the department to determine what laws may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It does appear that the general statutory, goal and rule restrictions on residential and commercial development and use of farm land apply to the claimants' use of the property, and these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the Seibert family acquired the property are exempt under ORS 197.352(3)(E) and will continue to apply to the claimants' use of the property. In addition, the siting standards of ORS 215.730, Goal 4 and its implementing rules related to dwelling siting standards based on health and safety are exempt under ORS 197.352(3)(B) and will continue to apply to the property as appropriate. There may be other laws that continue to 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 what laws apply to a use of property until there is a specific proposal for that use. 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, in some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the 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 property.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced 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 in order to allow the present owner to carry out a use of the property permitted at the time the current 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 laws enforced by the Commission or the department restrict the division and development of 51 acres of the subject 77-acre property for residential uses and the development of the remainder of the property for a commercial use. The claim asserts that the laws enforced by the Commission or department reduce the fair market value of the subject property by \$2,510,000. However, because the claim does not provide an appraisal or other substantiating documentation to establish 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, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Julia Seibert to use the subject property for a use permitted at the time she acquired the property on June 15, 1970 and consistent with her current life estate interest in the property; and to allow Cory Seibert to use the subject property for a use permitted at the time he acquired the property on June 29, 1990.

When Cory Seibert acquired the subject property on June 29, 1990 it was subject to the County's acknowledged EFU and FF zones, in accord with the applicable provisions of Statewide Planning Goals 3 and 4, and OAR 660 divisions 5 and 6 in effect on that date, and to the applicable provisions of ORS 215 then in effect..

Conclusion

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 the claimants' division of approximately 51 acres of the 77-acre property into 17, approximately three-acre parcels and development of a dwelling on each of those parcels, and to their development of the remainder of the property for a commercial use: applicable provisions of Statewide Planning Goals 3 and 4, ORS 215, and OAR 660 divisions 6 and 33 enacted after the claimants acquired their respective interests in the property. These land use laws will not apply to Julia Seibert's use of the property only to the extent necessary to allow her to use the property for the use described in this report, and only to the extent that use was permitted at the time she acquired the property on June 15, 1970, and is consistent with her current life estate. These land use laws will not apply to Cory Seibert's use of the property only to the extent necessary to allow him to use the property for the use described in this report, and only to the extent that use was permitted at the time he acquired the property on June 29, 1990.
2. The action by the State of Oregon provides the state's authorization to Julia Seibert to use the property subject to the standards in effect on June 15, 1970, consistent with her current life estate, and provides the state's authorization to Cory Seibert to use the property subject to the standards in effect on June 29, 1990. On the date, the property was subject to the County's acknowledged EFU and FF zones in accord with applicable provisions of Goals 3 and 4, and OAR 660 divisions 5 and 6 then in effect, and to the applicable provisions of ORS 215 then in effect. The department acknowledges that the relief to which Cory Seibert is entitled under ORS 197.352 will not allow him to use the property in the manner set forth in this claim.
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 215.402 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 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 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 property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 13, 2006. 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.