

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. M129421  
(BALLOT MEASURE 37) OF )  
V. Robert Thomsen and Elizabeth P. Thomsen, CLAIMANTS )

Claimants: V. Robert Thomsen and Elizabeth P. Thomsen (the Claimants)

Property: Township 2N, Range 11E, Section 6, Tax lots 3100 and 3600<sup>1</sup>, Hood River  
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' 1) division of tax lot 3100 into 50 approximately 0.25-acre parcels; and 2) division of that portion of tax lot 3600 not within the Columbia River Gorge Scenic Area (approximately 56 acres) into 34 approximately 1.65-acre parcels and development of a dwelling on each parcel: applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6 and 33. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on January 30, 1963.

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<sup>1</sup> Through a copy of an e-mail to Hood River County on October 25, 2006, the claimants' agent notified the Oregon Department of Administrative Services that an additional tax lot, tax lot 3101, should have been but was not included in this claim. While not expressly stated, the department assumes this notification was intended to be an amendment to claim M129421. Due to the timelines mandated by ORS 197.352, the department cannot accept substantive amendments to claims, and tax lot 3101 is not addressed in this report. The claimants may file a new claim for compensation for the tax lot omitted from this claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on January 30, 1963.

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

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

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

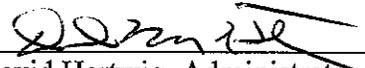
This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS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

FOR DLCD AND THE LAND  
CONSERVATION AND  
DEVELOPMENT COMMISSION:  
Lane Shetterly, Director

  
Cora R. Parker, Deputy Director  
DLCD

Dated this 20<sup>th</sup> day of November, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 20<sup>th</sup> day of November, 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 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

### **FOR INFORMATION ONLY**

The Oregon Department of Justice has advised the Department of Land Conservation and Development that “[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost.”

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**  
**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**  
**Final Staff Report and Recommendation**

November 20, 2006

**STATE CLAIM NUMBER:** M129421

**NAMES OF CLAIMANTS:** V. Robert Thomsen  
Elizabeth P. Thomsen

**MAILING ADDRESS:** 615 Willow Creek Road  
Lander, Wyoming 82520

**PROPERTY IDENTIFICATION:** Township 2N, Range 11E, Section 6  
Tax lots 3100 and 3600<sup>1</sup>  
Hood River County

**OTHER CONTACT INFORMATION:** Steven B. Anderson  
Cascade Planning Associates  
PO Box 135  
Mosier, Oregon 97040

**DATE RECEIVED BY DAS:** May 30, 2006

**180-DAY DEADLINE:** November 26, 2006

**I. SUMMARY OF CLAIM**

The claimants, V. Robert and Elizabeth P. Thomsen, seek compensation in the amount of \$13,148,753 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to 1) divide tax lot 3100 into 50 approximately 0.25-acre parcels; and 2) divide 56.25 acres of tax lot 3600 into approximately 1.65-acre parcels and develop a dwelling on each parcel and a sewer treatment system.<sup>2</sup> The subject property is located at 2450 Old Dalles Road, near Hood River, in Hood River County. (See claim.)

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<sup>1</sup> Through a copy of an e-mail to Hood River County on October 25, 2006, the claimants' agent notified the Oregon Department of Administrative Services that an additional tax lot, tax lot 3101, should have been but was not included in this claim. While not expressly stated, the department assumes this notification was intended to be an amendment to claim M129421. Due to the timelines mandated by ORS 197.352, the department cannot accept substantive amendments to claims, and tax lot 3101 is not addressed in this report. The claimants may file a new claim for compensation for the tax lot omitted from this claim.

<sup>2</sup> The subject property includes two tax lots. Tax lot 3100 consists of 12.50 acres, and tax lot 3600 consists of 84.25 acres.

## II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid in part. Department staff 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 the claimants' 1) division of tax lot 3100 into 50 approximately 0.25-acre parcels; and 2) division of that portion of tax lot 3600 not within the Columbia River Gorge Scenic Area (approximately 56 acres) into 34 approximately 1.65-acre parcels and development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands), 4 (Forest Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6, and 33. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on January 30, 1963.

The department also determined that the claim is not valid with respect to the portion of tax lot 3600 (approximately 17 acres) within the Columbia River Gorge National Scenic Area. (See the complete recommendation in Section VI. of this report.)

## III. COMMENTS ON THE CLAIM

### Comments Received

On September 26, 2006, 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 written comments were received in response to the 10-day notice.

Four of the comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally 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 waive a state law.

One of the comments is relevant to whether the laws that are the basis for the claim are exempt under ORS 197.352(3). The comment has 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 Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or

2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

### **Findings of Fact**

This claim was submitted to DAS on May 30, 2006, for processing under OAR 125, division 145. The claim generally identifies Hood River County's subdivision regulations, ordinances and zoning; ORS 92, 197 and 215; and OAR 660, division 33, as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

### **Conclusions**

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

## **V. ANALYSIS OF CLAIM**

### **1. Ownership**

ORS 197.352 provides for payment of compensation or relief from specific laws for "owners" as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines "owner" as "the present owner of the property, or any interest therein."

### **Findings of Fact**

The claimants, V. Robert and Elizabeth P. Thomsen, acquired the subject property on January 30, 1963, as reflected by a bargain and sale deed included with the claim.<sup>3</sup> According to bargain and sale deeds included with the claim, the claimants transferred a 95 percent interest in tax lot 3600 to B.B.K. Holdings on December 31, 2003, December 27, 2004, and December 6, 2005. The Hood River County Assessor's Office confirms the claimants' current ownership of an interest in the subject property.

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<sup>3</sup> The claimants assert in their claim that they acquired tax lot 3600 on October 12, 1961, which is the date of a deed through which V. Robert Thomsen and Betty Thomsen acquired the property, as reflected by a warranty deed included with the claim. However, according to the April 13, 2006, plant service report included with the claim, Victor W. Thomsen and Daisy A. Thomsen transferred tax lot 3600 to Victor Robert Thomsen and Elizabeth P. Thomsen on January 30, 1963. The department has attempted unsuccessfully to clarify the claimants' acquisition date with the claimants' agent. Absent documentation from the claimants to establish the October 12, 1961, conveyance, the department must rely on the available documentation to establish the date of acquisition.

## **Conclusions**

The claimants, V. Robert and Elizabeth P. Thomsen, are “owners” of an interest in the subject property as that term is defined by ORS 197.352(11)(C), as of January 30, 1963.

## **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 indicates that the claimants desire to 1) divide tax lot 3100 into 50 approximately 0.25-acre parcels; and 2) divide 56.25 acres of tax lot 3600 into approximately 1.65-acre parcels and develop a dwelling on each parcel and a sewer treatment system. It indicates that the desired use is not allowed under current land use regulations.<sup>4</sup> A portion of tax lot 3600 (generally the portion north of the BPA transmission corridor) is located within the scenic area of the Columbia River Gorge.

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

Tax lot 3100 is zoned EFU by Hood River County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the property is “agricultural land” as defined by Goal 3.<sup>5</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 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

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<sup>4</sup> The claimants summarily cited numerous state land use laws as applicable to this claim, but did not establish how the laws either apply to the claimants’ desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimants’ property or do not restrict the use of the claimants’ property in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants’ use of the subject property, based on the claimants’ asserted desired use.

<sup>5</sup> Tax lot 3100 is “agricultural land” because it contains Natural Resources Conservation Service Class I-IV soils.

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. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Tax lot 3600 is zoned Primary Forest (F-2) by Hood River County, as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

Goal 14, which also became effective on January 25, 1975, would likely apply to the division of the claimants' property into parcels less than two acres. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses.

The claimants also assert a desire to develop a sewer treatment system but do not seek relief from any laws requiring state authorizations for wells or septic or sewer systems. Nor do they describe their desired system with sufficient detail to allow the department to evaluate whether or the extent to which land use regulations restrict their desired use of the property in that manner. Without identifying which land use laws restrict use of their property to establish a sewer treatment system or providing a detailed description of the use, the claimants have not established a basis upon which relief can be granted under ORS 197.352 for their desired development of a sewer treatment system on the subject property.

The claimants acquired the subject property on January 30, 1963, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33, were all enacted or adopted after the claimants acquired the subject property in 1963 and do not allow the desired division or residential development of the property. These laws restrict the use of the subject property relative to the uses allowed when the claimants acquired the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. There may be other laws that currently apply to the claimants' use of the subject 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 which laws apply to a use of the subject

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 the land use regulation(s) (described in Section V.(2) of this report) must have “the effect of reducing the fair market value of the property, or any interest therein.”

#### **Findings of Fact**

The claim includes an estimate of \$13,148,753 as the reduction in the subject property’s fair market value due to the regulations that restrict the claimants’ desired use of the property. This amount is based on the claimants’ land use consultant’s comparison of properties in Hood River County.

#### **Conclusions**

As explained in Section V.(1) of this report, the claimants are V. Robert and Elizabeth P. Thomsen who acquired the subject property on January 30, 1963. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants acquired the subject property restrict the claimants’ desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the property is a reduction of \$13,148,753.

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

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

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

#### **Findings of Fact**

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33, which Hood River County has implemented through its current EFU and F-2 zones. All of these land use regulations were enacted or adopted after the claimants acquired the subject property.

## **Conclusions**

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on division and development of the claimants' property were in effect when the claimants acquired it in 1963. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimants acquired the subject property are exempt under ORS 197.352(3)(E) and will continue to apply to the claimants' use of the property. In addition, the department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. Those provisions include fire protection standards for dwellings. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes...." Accordingly, siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

A portion (approximately 17 acres) of tax lot 3600 is located within the Columbia River Gorge National Scenic Area. Within this portion of the property, the claimants' desired use is prohibited by state and local land use regulations that are required by federal law. As a result, the claimants' desired use of that portion of the property is prohibited by laws that are exempt under ORS 197.352(3), and the claim must be denied with respect to that portion of the property within the scenic area. This report does not authorize any use of that portion of tax lot 3600 within the Columbia River Gorge National Scenic Area.

There may be other laws that continue to apply to the claimants' use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws currently apply to that use and may continue to apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the 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 the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

## **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced laws that restrict the use of the subject property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the subject property permitted at the time the present owner acquired the property. The Commission, by

rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

### **Findings of Fact**

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$13,148,753. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when they acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

For that portion of the subject property within the Columbia River Gorge Scenic Area, land use regulations required by federal law prohibit the claimants' desired use. As a result, the claim must be denied with respect to that portion of the subject property.

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 V. Robert and Elizabeth P. Thomsen to use the portion of the subject property not within the Columbia River Gorge Scenic Area for a use permitted at the time they acquired the property on January 30, 1963.

### **Conclusions**

Based on the record, the department recommends that the claim be denied with respect to that portion of the subject property within the Columbia River Gorge National Scenic Area. The department recommends that the claim be otherwise 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' 1) division of tax lot 3100 into 50 approximately 0.25-acre parcels; and 2) division of that portion of tax lot 3600 not within the Columbia River Gorge Scenic Area (approximately 56 acres) into 34 approximately 1.65-acre parcels and development of a dwelling on each parcel: applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6 and 33. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on January 30, 1963.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on January 30, 1963.

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

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

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

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

The department issued its draft staff report on this claim on October 31, 2006. 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. No comments were received.