

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. M129431
(BALLOT MEASURE 37) OF)
William McAllister, CLAIMANT)

Claimant: William McAllister (the Claimant)

Property: Township 4S, Range 12E, Section 1, Tax lots 500 and 700
Township 4S, Range 13E, Tax lot 1200, Wasco County (the Property)

Claim: The demand for compensation and any supporting information received from the Claimant by the State of Oregon (the Claim).

Claimant 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 denied with regard to the claimant's desired veterinarian's office, physician's office and conference facility as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 William McAllister's: (1) development of a hunting and fishing preserve with equestrian facilities; (2) division of the remainder of the subject property into 24 parcels of no less than 10 acres each and development of a dwelling on each parcel; and (3) development of necessary and accessory roads and utilities to serve the hunting and fishing preserve with equestrian facilities and dwellings: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after October 31, 1975. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on October 31, 1975.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the property for the use described in this report, subject to the standards in effect on October 31, 1975. On that date, the property was subject to applicable provisions of Goal 3 and ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains 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 claimant 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 claimant to use the subject property, it may be necessary for him 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 claimant 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 claimant.

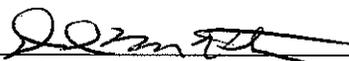
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352,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

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:


Lane Shetterly, Director
DLCD

Dated this 21st day of November, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 21st 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 21, 2006

STATE CLAIM NUMBER: M129431

NAME OF CLAIMANT: William McAllister

MAILING ADDRESS: 80445 Ross Road
Tygh Valley, Oregon 97063

PROPERTY IDENTIFICATION: Township 4S, Range 12E, Section 1
Tax lots 500 and 700

Township 4S, Range 13E
Tax lot 1200

Wasco County

OTHER CONTACT INFORMATION: Victor W. VanKoten
PO Box 325
Hood River, Oregon 97031

DATE RECEIVED BY DAS: May 31, 2006

180-DAY DEADLINE: November 27, 2006

I. SUMMARY OF CLAIM

The claimant, William McAllister, seeks compensation in the amount of \$7.5 million 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 claimant desires compensation or the right to: (1) develop a veterinarian's office, physician's office and hunting and fishing preserve with conference and equestrian facilities; (2) divide the remainder of the subject property into 24 parcels of no less than 10 acres each and develop a dwelling on each parcel; and (3) develop necessary and accessory roads and utilities to serve the veterinarian's office, physician's office and hunting and fishing preserve with conference and equestrian facilities and dwellings. The subject property is located near Ross Road, north of Wamic Market Road, near Wamic, in Wasco 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 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 William McAllister's: (1) development of a hunting and fishing preserve with equestrian facilities; (2) division of the remainder of the subject property into 24 parcels of no less than 10 acres each and development of a dwelling on each parcel; and (3) development of necessary and accessory roads and utilities to serve the hunting and fishing preserve with equestrian facilities and dwellings: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after October 31, 1975. These laws will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on October 31, 1975. (See the complete recommendation in Section VI of this report.)

The department recommends that the claim be denied with regard to the claimant's desired veterinarian's office, physician's office and conference facility because these uses were prohibited under the laws in effect when the claimant acquired the property in 1975.

III. COMMENTS ON THE CLAIM

Comments Received

On September 18, 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, no written comments were received in response to the 10-day notice.

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on May 31, 2006, for processing under OAR 125, division 145. The claim identifies OAR 660, division 33, as restricting the claimant's desired use of the subject property. 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 claimant, William McAllister, acquired the subject property on October 31, 1975, as reflected by a land sale contract and fulfillment warranty deed included with the claim. The Wasco County Assessor’s Office confirms the claimant’s current ownership interest in the subject property.

Conclusions

The claimant, William McAllister, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of October 31, 1975.

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 claimant’s use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant acquired the property.

Findings of Fact

The claim indicates that the claimant desires to: 1) develop a veterinarian’s office, physician’s office and hunting and fishing preserve with conference and equestrian facilities; 2) divide the remainder of the subject property into 24 parcels of no less than 10 acres each and develop a dwelling on each parcel; and 3) develop necessary and accessory roads and utilities to serve the veterinarian’s office, physician’s office, hunting and fishing preserve with conference and equestrian facilities and dwellings. The claim indicates that those uses are not allowed under OAR 660, division 33.¹

¹ The claim indicates the claimant desires to “develop necessary accessory roads and utilities” to serve the desired uses but does not seek relief from any state land use laws that regulate or restrict the claimant’s development of these components of the desired use. Nor does the claim describe those components of the desired use with sufficient detail to allow the department to evaluate whether or the extent to which land use regulations may restrict the desired use of the property in that manner. To the extent the claimant’s development of those components of the desired use requires waiver of additional land use regulations not identified or specified in this report, the claimant

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimant's property is zoned by Wasco County as Exclusive Farm Use (A1) as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant's property is "agricultural land" as defined by Goal 3.² 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, 215.283, 215.284, 215.296 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 the 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 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.)

ORS 215.296 establishes standards for approval of the uses listed under ORS 215.283(2), including hunting and fishing preserves (ORS 215.283(2)(c)). OAR 660-033-0130 also regulates hunting and fishing preserves on land zoned EFU. On lands identified as "high-value farm land" under OAR 660-033-0020(8)(a), an existing hunting and fishing preserve wholly within a farm zone may be maintained, enhanced or expanded on the tract, subject to other requirements of law (OAR 660-003-0130(18)). On land that is not high value, hunting and fishing preserves are allowed consistent with OAR 660-033-0130(5). Veterinarian's and physician's offices and hunting and fishing preserves that include conference facilities are not uses allowed under ORS 215.283. Equestrian facilities are allowed on EFU-zoned land only to the extent they meet the definition of a "farm use" under ORS 215.203.³

The claimant acquired the subject property after the adoption of the statewide planning goals, but before the Commission acknowledged Wasco County's land use regulations to be in compliance

may file a new claim under ORS 197.352 with regard to regulations that restrict those components of the desired use.

² The claimant's property is "agricultural land" because it contains Natural Resources Conservation Service Class I-VI soils.

³ Hunting and fishing preserves that include conference facilities may be allowed on land zoned EFU pursuant to ORS 215.296. ORS 215.203(2)(a) defines "farm use" to include the current employment of land for the primary purpose of obtaining a profit in money by stabling and training equines, including but not limited to, providing riding lessons, training clinics and schooling shows.

with the statewide planning goals pursuant to ORS 197.250 and 197.251.⁴ Because the Commission had not acknowledged the county's plan and land use regulations when the claimant acquired the subject property on October 31, 1975, the statewide planning goals, and Goal 3 in particular, applied directly to the claimant's property when he acquired it.⁵

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the claimant's opportunity to divide the subject property when he acquired it in 1975 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.

Under the Goal 3 standards in effect on October 31, 1975, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition). Under the provisions of ORS 215.203 in effect on October 31, 1975, veterinarian's and physician's offices and conference facilities were not allowed on agricultural land. Equestrian facilities could only be allowed to the extent they met the definition of "farm use" under ORS 215.203 (1975 edition).

No information has been presented in the claim to establish that the claimant's desired division of the subject property into 10-acre parcels complies with the "commercial" standard for farm parcels under Goal 3 or the standards for non-farm parcels under ORS 215.263 (1975 edition), nor is there any information to establish that the claimant's desired development of additional dwellings on the subject property satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1975 edition). The claim also does not establish whether the claimant's desired equestrian facility could meet the definition of "farm use" under ORS 215.203 (1975 edition), in effect when the claimant acquired the property.

⁴ Wasco County's EFU zones (A-1 and A-2) were acknowledged by the Commission for compliance with Goal 3 on August 25, 1983.

⁵ The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of each county's comprehensive plan and implementing regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev. den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer applied directly to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

Conclusions

The current zoning requirements, minimum lot size and dwelling and use standards established by Goal 3, ORS 215 and OAR 660, division 33, do not allow the claimant's desired division or development of the subject property. However, the claim does not establish whether or the extent to which the claimant's desired use of the subject property complies with the standards for land divisions and development under the requirements of Goal 3 and ORS 215 in effect when the claimant acquired the subject property on October 31, 1975. Nor does the claim establish whether the claimant's desired equestrian facility could meet the definition of "farm use" under ORS 215.203 (1975 edition), in effect when the claimant acquired the property.

Veterinarian's and physician's offices and conference facilities were not allowed on agricultural land under Goal 3 and the provisions of ORS 215 (1975 edition) in effect when the claimant acquired the property. Therefore, no state laws enacted or adopted since the claimant acquired the subject property restrict the use of the property for a veterinarian's or physician's office or conference facility relative to the uses permitted when the claimant acquired the subject property on October 31, 1975.

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 claimant has identified. There may be other laws that currently apply to the claimant's use of the subject property, and that may continue to apply to the claimant's 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 claimant seeks 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 \$7.5 million as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the claimant's comparison of the property's fair market value based on the uses allowed under current land uses regulations to its value based on the claimant's desired uses.

Conclusions

As explained in Section V.(1) of this report, the claimant is William McAllister who acquired the subject property on October 31, 1975. Under ORS 197.352, the claimant is 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 claimant acquired the subject property restrict a portion

of the claimant's desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$7.5 million. Without an appraisal or other documentation and without verification of whether or the extent to which the claimant's desired use of the subject property was allowed under the standards in effect when he acquired the property, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the 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.

No state laws enacted or adopted since the claimant acquired the subject property restrict the use of the property for a veterinarian's or physician's office or conference facility relative the uses allowed when the claimant acquired the property in 1975. Those uses were not allowed on the subject property when the claimant acquired it on October 31, 1975. Therefore, the fair market value of the subject property, relative to those uses, has not been reduced 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 Goal 3, ORS 215 and OAR 660, division 33, which Wasco County has implemented through its current EFU zone. With the exception of provisions of Goal 3 and ORS 215 in effect when the claimant acquired the subject property on October 31, 1975, these land use regulations were enacted or adopted after the claimants acquired the 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 with the exception of provisions of Goal 3 and ORS 215 in effect in 1975, the statutory, goal and rule restrictions on division and development of the claimant's property were not in effect when the claimant acquired it, and therefore, these laws are not exempt under ORS 197.352(3)(E). Provisions of Goal 3 and ORS 215 in effect when the claimant acquired the subject property in 1975 are exempt under ORS 197.352(3)(E) and will continue to apply to the property. Those regulations prohibit the claimant's desired use of the subject property for a veterinarian's or physician's office or conference facility.

Other laws in effect when the claimant acquired the subject property are also exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's use of the property. There may be other laws that continue to apply to the claimant's 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 property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws 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 claimant has 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 claimant should be aware that the less information he has 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 his 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 one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department do not restrict claimant's desired use of the subject property for a veterinarian's or physician's office or conference facility, relative to what was permitted when the claimant acquired the property in 1975 and do not reduce its fair market value. All state laws restricting these specific uses of the property are exempt under ORS 197.352(3)(E).

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department otherwise restrict the claimant's 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 \$7.5 million. 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 a fair market 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 claimant's desired use of the subject property was allowed under the standards in effect when he 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.

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 William McAllister to use the subject property for a use permitted at the time he acquired it on October 31, 1975.

Conclusions

Based on the record and the foregoing findings and conclusions, the claimant has not established that he is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department that apply to his desire to use of the subject property for a veterinarian's or physician's office or conference facility. Therefore, the department recommends that this claim be denied as to these desired uses.

Based on the record, 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 William McAllister's: (1) development of a hunting and fishing preserve with equestrian facilities; (2) division of the remainder of the subject property into 24 parcels of no less than 10 acres each and development of a dwelling on each parcel; and (3) development of necessary and accessory roads and utilities to serve the hunting and fishing preserve with equestrian facilities and dwellings: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after October 31, 1975. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on October 31, 1975.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the property for the use described in this report, subject to the standards in effect on October 31, 1975. On that date, the property was subject to applicable provisions of Goal 3 and ORS 215 then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains 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 claimant 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 claimant to use the subject property, it may be necessary for him 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 claimant 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 claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on November 1, 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. No comments were received.