

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. M129641  
(BALLOT MEASURE 37) OF )  
Duane and Janice Weeks, CLAIMANTS )

Claimants: Duane and Janice Weeks (the Claimants)

Property: Township 3S, Range 1E, Section 21, Tax lot 1400, Clackamas 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 Duane and Janice Weeks' division of the 19.7-acre subject property into three parcels or to their development of a dwelling on each resulting undeveloped parcel, as shown on Exhibit 10 to the claim: applicable provisions of Goal 3, ORS 215 and OAR 660, division 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 April 23, 1966.
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 April 23, 1966.
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.

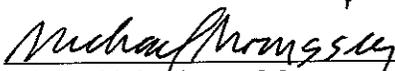
Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

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).

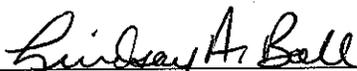
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable 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 Manager for the Measure 37 Services Division 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 Director 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

  
Michael Morrissey, Manager  
DLCD, Measure 37 Division  
Dated this 5<sup>th</sup> day of January, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
Lindsay A. Ball, Director  
DAS  
Dated this 5<sup>th</sup> day of January, 2007.

## **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**

January 5, 2007

**STATE CLAIM NUMBER:** M129641

**NAMES OF CLAIMANTS:** Duane and Janice Weeks

**MAILING ADDRESS:** 3185 N Holly Street  
Canby, Oregon 97013

**PROPERTY IDENTIFICATION:** Township 3S, Range 1E, Section 21  
Tax lot 1400  
Clackamas County

**OTHER CONTACT INFORMATION:** Dorothy S. Cofield  
12725 SW Millikan Way, Suite 300  
Beaverton, Oregon 97005

**DATE RECEIVED BY DAS:** July 12, 2006

**180-DAY DEADLINE:** January 8, 2007

**I. SUMMARY OF CLAIM**

The claimants, Duane and Janice Weeks, seek compensation in the amount of \$1.5 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 claimants desire compensation or the right to divide the 19.7-acre subject property into three parcels, and to develop a dwelling on each resulting undeveloped parcel, as shown on Exhibit 10 to the claim.<sup>1</sup> The subject property is located at 3185 N Holly Street, near Canby, in Clackamas County. (See claim.)

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<sup>1</sup> Exhibit 10 shows three parcels: parcel 1 with 5.83 acres, parcel 2 with 6.97 acres, and parcel 3 with 6.81 acres. The parcels all have access to N. Holly Street. The claim also indicates that the claimants desire to transfer the newly created parcels for development. In effect, the claimants request that a decision of the department to “not apply” (waive) certain laws as set forth in this report be transferable with the property. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. A determination of transferability is beyond the scope of relief that the department may grant under ORS 197.352. The Oregon Department of Justice has advised the department that “[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost.”

## 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 Duane and Janice Weeks' division of the 19.7-acre subject property into three parcels and to their development of a dwelling on each resulting undeveloped parcel, **as shown on Exhibit 10 to the claim**: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 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 April 23, 1966. (See the complete recommendation in Section VI. of this report.)

## III. COMMENTS ON THE CLAIM

### Comments Received

On October 6, 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 July 12, 2006, for processing under OAR 125, division 145. The claim identifies ORS 92, 197 and 215 and OAR 660 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, Duane and Janice Weeks, acquired the subject property on April 23, 1966, as reflected by a deed included with the claim. On August 21, 1998, the claimants transferred an undivided one-half interest in the property to each of the Duane L. Weeks and the Janice M. Weeks Revocable Living Trusts, with themselves as trustees, as reflected by warranty deeds and certifications of trust included with the claim.<sup>2</sup> The Clackamas County Assessor’s Office confirms the claimants’ current ownership of the subject property.

### **Conclusions**

The claimants, Duane and Janice Weeks, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of April 23, 1966.

### **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 divide the 19.7-acre subject property into three parcels and to develop a dwelling on each resulting undeveloped parcel, and that the use is not allowed under current land use regulations.

The claim specifically identifies the following state land use regulations as restricting the claimants’ desired use of the property: Statewide Land Use Planning Goals 2, 3, 12 and 14; ORS 92.046(5); ORS 215.263(2), (4), (9), and (12); ORS 215.283(1)(e)(A); ORS 215.284; ORS 215.700 and 705; ORS 215.780(1)(a); ORS 197.175(2)(d); ORS 215.296; OAR 660-004; OAR 660-004-0040; OAR 660012-0060; OAR 660-033-0090, 0120, 0130, and 0135; and OAR 660-033-0100.

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<sup>2</sup> Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

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 claimants' property is zoned by Clackamas County as EFU as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.<sup>3</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

The claim provides that the claimants "\* \* \* seek removal of Goal 2 to the extent that this Goal can be understood to provide a process for taking exception to Goal 3. In this case, the Weekses would not be able to accomplish the desired partition using the exceptions process, because they do not meet the applicable standards for a reason, built, or committed exception." The claim is not valid with regard to Goal 2 for two reasons. First, the exceptions provisions of Goal 2 (and ORS 197.732, which is *not* included in the claim) provide a means for a property owner to be able to carry out a use of property, by taking an exception to a Statewide Planning Goal. A law authorizing an owner to avoid the requirements of another law cannot be a restriction on the use of private real property. By definition, such a law provides an enlargement of the owner's rights, not a restriction. Second, the claim already asserts a restriction based on Statewide Planning Goal 3. To the extent that that element of the claim is valid, and the department elects to "not apply" the applicable provisions of Goal 3 to allow the claimants to carry out their desired use of the property, there is no longer anything to take an exception to – Goal 3 no longer applies to the use of the property.

The claim is directed at Goal 12 "\* \* \* [t]o the extent Goal 12 can be read [sic] to prohibit, in substance, a three lot partition as generally proposed in Exhibit 10." The claim also identifies OAR 660-012-0060, a Goal 12 implementing rule. That rule concerns amendments of comprehensive plans and land use regulations. This claim does not involve an amendment to Clackamas County's comprehensive plan or land use regulations. To the extent that Goal 12 applies to the claimants' desired use, it would be if that use involves a transportation facility, service or improvement that may not be permitted on rural lands. OAR 660-012-0065. No transportation facility, service or improvement is identified in the claim; as a result the department is unable to determine whether Goal 12 of OAR 660-012 apply to the claimant's desired use of the property.

The claim is directed at Goal 14 "\* \* \* to the extent that this Goal can be understood to prevent the partition of the EFU zoned land, in a situation where the resulting lots will be an average size of 6 acres, and where the lots will use wells and utilize septic systems." The claim also lists OAR 660-004-0040, concerning rural residential development. The claimants are correct that OAR 660-004-0040 does not apply to their desired use of the property because the property is not rural residential land as defined in that rule. Goal 14 does apply to the claimants desired use, but based on the number and size of lots and homes involved, and their relation to urban areas, the department finds that the desired use is rural and in compliance with Goal 14.

The claim identifies ORS 92.046(5) as restricting the desired use because the statute "requires partitions to be in compliance with the comprehensive plan and zoning code. This provision

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<sup>3</sup> The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

would restrict the proposed development.” The claimants also filed a claim with Clackamas County, and that claim has been approved. As a result, the claimant’s desired use is no longer subject to the county’s comprehensive plan and zoning code, and as a result ORS 92.046(5) does not apply to the claimants’ desired use of their property.

The claim identifies ORS 215.263(2), (4), (9) and (12) as regulating land divisions. This statute is addressed below.

The claim identifies ORS 215.283 and specifically 215.283(1)(e)(A) as restricting dwellings on the property. The cited statutory section does not exist. ORS 215.283 generally authorizes dwellings under certain conditions on land zoned EFU. The claim does not establish how the statute restricts their desired use of the property.

The claim identifies ORS 215.284 as establishing standards for non-farm dwellings. This statute is addressed below.

The claim identifies ORS 215.700, 705 and 780(1)(a) as establishing standards dwellings and land divisions. These statutes are addressed below.

The claim identifies ORS 197.175(2)(d) as requiring Clackamas County to make land use decisions in compliance with its comprehensive plan [and land use regulations]. Again, as Clackamas County has approved the claimants’ claim to the county, the applicable provisions of the county’s comprehensive plan and land use regulations no longer apply to the claimants’ desired use of the property. As a result, ORS 197.175(2)(d) no longer applies to the claimants’ desired use of the property.

The claim identifies ORS 215.296 as restricting the claimants’ desired use by imposing a “significant impact” test for all uses allowed under ORS 215.283(2). Claimants have not proposed, and have not described a desired use that is a use “allowed under ORS 215.283(2). As a result, ORS 215.296 does not apply to claimants’ desired use of the property.

The claim identifies a number of rules in OAR 660-033. With the exception of OAR 660-033-0090, these rules are addressed below. OAR 660-033-0090 provides that uses on high value farmland shall be limited to those specified in OAR 660-033-0120, and requires counties to zone high-value farm land for exclusive farm use. As a result, to the extent that this rule applies to the claimants’ desired use, it is addressed in conjunction with OAR 660-033-0120.

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 and OAR 660-033-0100 establish 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 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-00120, 0130, and 0135 establish standards for dwellings on farm land. These rules became effective in 1993 and 1994, and interprets the statutory standards for dwellings in an EFU zone under ORS 215.283 and 215.284. 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.)

The claimants acquired the subject property on April 23, 1966, 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 Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimants acquired the subject property in 1966 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 use 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 \$1.5 million 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 a market analysis included with the claim.

### **Conclusions**

As explained in Section V.(1) of this report, the claimants are Duane and Janice Weeks who acquired the subject property on April 23, 1966. 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 \$1.5 million.

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 Goal 3, ORS 215 and OAR 660, division 33, which Clackamas County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after the claimants acquired the subject property.

#### **Conclusions**

Although a development proposal for the subject property was included with the claim, 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 1966. 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. 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 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 \$1.5 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 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.

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 Duane and Janice Weeks to use the subject property for a use permitted at the time they acquired the property on April 23, 1966.

### **Conclusions**

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 Duane and Janice Weeks' division of the 19.7-acre subject property into three parcels or to their development of a dwelling on each resulting undeveloped parcel, **as shown on Exhibit 10 to the claim**: applicable provisions of Goal 3, ORS 215 and OAR 660, division 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 April 23, 1966.
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 April 23, 1966.
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 December 8, 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. Comments were received from the claimants' attorney, and have been considered in this final report.