

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. M129669  
(BALLOT MEASURE 37) OF )  
Anthony C. Corrado, CLAIMANT )

Claimant: Anthony C. Corrado (the Claimant)

Property: Township 2N, Range 11E, Section 5, Tax lot 1000

Township 2N, Range 11E, Section 8, Tax lot 101

Hood River 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 as to that portion of tax lot 1000 (approximately 49 acres) and that portion of tax lot 101 (approximately two acres) within the Columbia River Gorge National Scenic Area 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 the remaining portions as to the 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 Anthony Corrado's division of that portion of tax lot 1000 not within the Columbia River Gorge National Scenic Area (approximately 29 acres) into approximately 8,000-square foot parcels and to his development of a dwelling on each parcel; and to his development of dwelling on that portion of tax lot 101 not within the Columbia River Gorge National Scenic Area (approximately 25 acres): applicable provisions of Goals 4 and 14, ORS 215 and OAR 660, division 6, enacted or adopted after the claimant acquired each tax lot. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the

those portions of the subject property not within the Columbia National River Gorge Scenic Area for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 1000 on January 16, 1964, and tax lot 101 on November 24, 1987.

2. The action by the State of Oregon provides the state's authorization to the claimant to use those portions of the subject property not within the Columbia National River Gorge Scenic Area for the use described in this report, subject to the standards in effect on January 16, 1964, for tax lot 1000, and November 24, 1987, for tax lot 101. On November 24, 1987, tax lot 101 was subject to compliance with Goal 4 and OAR 660, division 6, as implemented through Hood River County's acknowledged forest zone.

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).

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 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:** M129669

**NAMES OF CLAIMANT:** Anthony C. Corrado

**MAILING ADDRESS:** 2360 Old Dalles Drive  
Hood River, Oregon 97031

**PROPERTY IDENTIFICATION:** Township 2N, Range 11E  
Section 5: tax lot 1000  
Section 8: tax lot 101  
Hood River County

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

**DATE RECEIVED BY DAS:** July 14, 2006

**180-DAY DEADLINE:** January 10, 2007

**I. SUMMARY OF CLAIM**

The claimant, Anthony Corrado, seeks compensation in the amount of \$11,575,306 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) divide tax lot 1000 into 95 approximately 8,000-square foot parcels and develop a dwelling on each parcel; and 2) develop a dwelling on tax lot 101.<sup>1</sup> The subject property is located on the east and west sides of Old Dalles Road, approximately two miles east of the intersection with East Side Road, near Hood River, in Hood River 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

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<sup>1</sup> The subject property includes two tax lots. Tax lot 1000 consists of 78.5 acres, and tax lot 101 consists of 27.04 acres.

not apply to the claimant's division of that portion of tax lot 1000 not within the Columbia River Gorge National Scenic Area (approximately 29 acres) into approximately 8,000-square foot parcels and to his development of a dwelling on each parcel; and to his development of a dwelling on that portion of tax lot 101 not within the Columbia River Gorge National Scenic Area (approximately 25 acres): applicable provisions of Statewide Planning Goals 4 (Forest Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6, enacted or adopted after the claimant acquired each tax lot. These laws will not apply to the claimant only to the extent necessary to allow him to use those portions of the subject property not within the Columbia River Gorge National Scenic Area for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 1000 on January 16, 1964, and tax lot 101 on November 24, 1987.

The department also determined that the claim is not valid with respect to that portion of tax lot 1000 (approximately 49 acres) and that portion of tax lot 101 (approximately two 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, two written comments were received in response to the 10-day notice.

One of the comments does 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 July 14, 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 provisions of 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 claimant, Anthony Corrado, acquired tax lot 1000 on January 16, 1964, as reflected by a warranty deed included in the claim and tax lot 101 on November 24, 1987, as reflected by a bargain and sale deed included with the claim. On May 6, 1991, the claimant transferred the property to the A.C. Corrado Trust, a revocable trust, with himself as trustee, as reflected by a quitclaim deed included with the claim.<sup>2</sup> The Hood River County Assessor's Office confirms the claimant's current ownership of the subject property.

### **Conclusions**

The claimant, Anthony Corrado, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of January 16, 1964, for tax lot 1000, and as of November 24, 1987, for tax lot 101.

### **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

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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.

property relative to how the property could have been used at the time the claimant or a family member acquired the property.

### **Findings of Fact**

The claim indicates that the claimant desires to divide tax lot 1000 into 95 approximately 8,000-square foot parcels and develop a dwelling on each parcel, and develop a dwelling on tax lot 101. It indicates that the desired use is not allowed under current land use regulations.<sup>3</sup>

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The portions of the property located inside the Columbia River Gorge National Scenic Area (approximately 51 acres) are zoned Commercial Forest (G-F-1), and the portions of the property outside the Columbia River Gorge National Scenic Area (approximately 54 acres) are zoned Primary Forest (F-2) as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimant's property is "forest land" under Goal 4. Forty-nine acres of tax lot 1000 (the northern half and the eastern part of the southern half) and approximately two acres of tax lot 101 (the northeast corner) are located within the Columbia River Gorge National Scenic Area.

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.

The portions of the property within the Columbia River Gorge National Scenic Area are subject to additional development restrictions, which are required to comply with federal law and which prohibit the desired division and development.

Goal 14, which also became effective on January 25, 1975, would likely apply to the division of tax lot 1000 into parcels less than two acres. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses.

The claimant acquired tax lot 1000 on January 16, 1964, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. The claimant acquired tax lot 101 on November 24, 1987. At that time, tax lot 101 was subject to Hood River County's

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<sup>3</sup> The claimant summarily cited numerous state land use laws as applicable to this claim, but did not establish how the laws either apply to the claimant's 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 claimant's property or do not restrict the use of the claimant's 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 claimant's use of the subject property, based on the claimant's description of his desired use.

acknowledged forest zone.<sup>4</sup> When the claimant acquired tax lot 101, the desired development of the property would have been governed by the applicable provisions of Goal 4 and OAR 660, division 6, as implemented through the county's acknowledged forest zone.<sup>5</sup>

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established pursuant to Goals 4 and 14 and provisions applicable to land zoned for forest use in ORS 215 and OAR 660, division 6, were all enacted or adopted after the claimant acquired the subject property in 1964 and 1987 and do not allow the desired division or residential development of the property. However, the claim does not establish whether or to what extent the claimant's desired use of tax lot 101 complies with the standards for land development in Hood River County's acknowledged forest zone and comprehensive plan in effect when the claimant acquired the tax lot on November 24, 1987. The portions of the subject property within the Columbia River Gorge National Scenic Area are subject to additional development restrictions, which are required to comply with federal law and which prohibit the claimant's desired division and development.

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 \$11,575,306 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 land use consultant's comparison of similar properties in Hood River County.

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<sup>4</sup> When Hood River County's forest zone was acknowledged by the Commission for compliance with Goal 4 on January 11, 1985, tax lot 101 was zoned by Hood River County as F-2, which allowed single-family dwellings as a conditional use.

<sup>5</sup> After the county's comprehensive plan and land use regulations were acknowledged by the Commission as complying with the statewide planning goals, the goals and implementing rules no longer applied directly to individual local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, insofar as the state and local provisions implement the requirements of the goals and rules, 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**

As explained in Section V.(1) of this report, the claimant is Anthony Corrado who acquired tax lot 1000 on January 16, 1964, and tax lot 101 on November 24, 1987. 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 the claimant's desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the property is a reduction of \$11,575,306.

Without an appraisal or other documentation, and without verification of whether or the extent to which the claimant's desired use of the property was permitted under the laws in effect when he acquired the property, and without an estimate of the reduction in fair market value of only those portions of the subject property not within the Columbia River Gorge National Scenic Area, 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 4 and 14, ORS 215 and OAR 660, division 6, which Hood River County has implemented through its current F-2 zone. These laws were enacted or adopted after the claimant acquired tax lot 1000. With the exception of amendments adopted after November 24, 1987, these land use regulations were enacted or adopted before the claimant acquired tax lot 101.

## **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 claimant's property were in effect when the claimant acquired tax lot 1000 in 1964. With the exception of amendments enacted or adopted after 1987, these laws were in effect when the claimant acquired tax lot 101 in 1987. These laws are exempt only to the extent they were enacted or adopted after the claimant acquired the subject property. Provisions of Goal 4 and OAR 660, division 6, in effect when the claimant acquired tax lot 101 in 1987 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Approximately 49 acres of tax lot 1000 and approximately two acres of tax lot 101 are located within the Columbia River Gorge National Scenic Area. Within those portions of the subject property, the claimant's desired use is prohibited by land use regulations that are required to comply with federal law. ORS 197.352(3)(C) specifically exempts land use regulations that are required to comply with federal law. As a result, the claimant's desired use of the portions of the subject property within the Columbia River Gorge National Scenic Area is prohibited. This report does not authorize any use of those portions of tax lots 1000 and 101 within the Columbia River Gorge National Scenic Area.

Other laws in effect when the claimant acquired the subject property are exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's 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).

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 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 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 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 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 claimant's desired use of portions of the subject property not within

the Columbia River Gorge National Scenic Area. 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 \$11,575,306. 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 claimant's desired use of portions of the subject property not within the Columbia River Gorge National Scenic Area was allowed under the standards in effect when he acquired the subject 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 those portions of the subject property not within the Columbia River Gorge National Scenic Area to some extent.

For those portions of the subject property within the Columbia River Gorge National Scenic Area, land use regulations required to comply with federal law prohibit the claimant's desired use. As a result, the claim must be denied with respect to those portions 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 Anthony Corrado to use portions of the subject property not within the Columbia River Gorge National Scenic Area for a use permitted at the time he acquired tax lot 1000 on January 16, 1964, and tax lot 101 on November 24, 1987.

### **Conclusions**

Based on the record, the department recommends that the claim be denied with respect to the approximately 51 acres of the subject property located within the Columbia River Gorge National Scenic Area because land use regulations, which prohibit development of that portion of the property, were enacted or adopted to comply with federal law and therefore, are exempt under ORS 197.352(3)(C). 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 Anthony Corrado's division of that portion of tax lot 1000 not within the Columbia River Gorge National Scenic Area (approximately 29 acres) into approximately 8,000-square foot parcels and to his development of a dwelling on each parcel; and to his development of dwelling on that portion of tax lot 101 not within the Columbia River Gorge National Scenic Area (approximately 25 acres): applicable provisions of Goals 4 and 14, ORS 215 and OAR 660, division 6, enacted or adopted after the claimant acquired each tax lot. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the those portions of the subject property not within the Columbia National River Gorge Scenic Area for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 1000 on January 16, 1964, and tax lot 101 on November 24, 1987.
2. The action by the State of Oregon provides the state's authorization to the claimant to use those portions of the subject property not within the Columbia National River Gorge Scenic Area for the use described in this report, subject to the standards in effect on January 16, 1964, for tax lot 1000, and November 24, 1987, for tax lot 101. On November 24, 1987, tax lot 101 was

subject to compliance with Goal 4 and OAR 660, division 6, as implemented through Hood River County's acknowledged forest zone.

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 December 8, 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.