

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. M129734
(BALLOT MEASURE 37) OF	)
Joseph and Sharon Alves, Gilbert and Bernette Schelin and	)
Audrie Hardy, CLAIMANTS	)

Claimants: Joseph and Sharon Alves, Gilbert and Bernette Schelin and Audrie Hardy  
(the Claimants)

Property: Township 35S, Range 1W, Section 18, Tax lot 609, Jackson County  
(the Property)

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

Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to the claimants' development of a dwelling on the 5-acre subject property: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired their respective present interests in the subject property. 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 Joseph and Sharon Alves acquired their present interest in the subject property on March 25, 1988, and when Gilbert and Bernette Schelin and Audrie Hardy acquired their present interests in the property on June 1, 1989.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the property for the use described in this report, subject to the standards in effect on March 25, 1988, for Joseph and Sharon Alves, and June 1, 1989, for Gilbert and Bernette Schelin and

Audrie Hardy. On those dates, the property was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Jackson County's acknowledged EFU zone, and the applicable provisions 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 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 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 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.

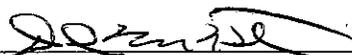
FOR DLCD AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:

Lane Shetterly, Director



Michael Morrissey, Manager  
DLCD, Measure 37 Services Division  
Dated this 19<sup>th</sup> day of January, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division

Dated this 19<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 19, 2007

**STATE CLAIM NUMBER:** M129734

**NAMES OF CLAIMANTS:** Joseph and Sharon Alves  
Gilbert and Bernette Schelin  
Audrie Hardy

**MAILING ADDRESS:** Joseph and Sharon Alves  
3080 Highway 234  
White City, Oregon 97503

Gilbert and Bernette Schelin  
3090 Highway 234  
White City, Oregon 97503

Audrie Hardy  
1675 W 13th Avenue  
Junction City, Oregon 97448

**PROPERTY IDENTIFICATION:** Township 35S, Range 1W, Section 18  
Tax lot 609  
Jackson County

**OTHER CONTACT INFORMATION:** Mark S. Bartholomew  
Hornecker, Cowling, Hassen & Heysell LLP  
717 Murphy Road  
Medford, Oregon 97504

**DATE RECEIVED BY DAS:** July 24, 2006

**180-DAY DEADLINE:** January 20, 2007

**I. SUMMARY OF CLAIM**

The claimants, Joseph and Sharon Alves, Gilbert and Bernette Schelin and Audrie Hardy, seek compensation in the amount of \$40,000 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 develop a dwelling on the 5-acre subject property. The subject property is located at 3090 Highway 234, near White City, in Jackson County. (See claim.)

## II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to the claimants' development of a dwelling on the 5-acre subject property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after each claimant acquired the subject property. 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 Joseph and Sharon Alves acquired an interest in the property on March 25, 1988, and when Gilbert and Bernette Schelin and Audrie Hardy acquired an interest in the property on June 1, 1989. (See the complete recommendation in Section VI. of this report.)

## III. COMMENTS ON THE CLAIM

### Comments Received

On October 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, 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 24, 2006, for processing under OAR 125, division 145. The claim identifies Goals 3, 4 (Forest Lands), 5 (Open Spaces), 11 (Public Facilities) and 14 (Urbanization); ORS 92, 195, 197 and 215; and provisions of OAR 340 and 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**

Claimant Audrie Hardy and her late husband, Ronald Hardy, acquired a larger tract of land including the subject property (tax lot 600)<sup>1</sup> on December 30, 1976, as reflected by a warranty deed included with the claim. In 1979, Audrie and Ronald Hardy, conveyed tax lot 600 to Gilbert and Bernette Schelin, as reflected by a deed card included with the claim. Claimants Gilbert and Bernette Schelin divided tax lot 609 from tax lot 600 and conveyed tax lot 609 to Audrie and Ronald Hardy on January 9, 1981, as reflected by a bargain and sale deed included with the claim. Audrie and Ronald Hardy then conveyed the subject property back to Gilbert and Bernette Schelin on January 14, 1988, as reflected by a bargain and sale deed included with the claim. On March 25, 1988, Gilbert and Bernette Schelin conveyed the subject property to Joseph and Sharon Alves, as reflected by a bargain and sale deed included with the claim. Finally, on June 1, 1989, Joseph and Sharon Alves conveyed an undivided one-third interest in the subject property to Gilbert and Bernette Schelin, and an undivided one-third interest to Audrie Hardy, retaining an undivided one third interest for themselves, as reflected by a warranty deed included with the claim. The Jackson County Assessor’s Office confirms the claimants’ current ownership of the subject property.

### **Conclusions**

The claimants, Joseph and Sharon Alves, Gilbert and Bernette Schelin and Audrie Hardy, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). Joseph and Sharon Alves acquired their interest in the subject property on March 25, 1988, and Gilbert and Bernette Schelin and Audrie Hardy acquired their interests in the property on June 1, 1989.

### **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.

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<sup>1</sup> The subject property, tax lot 609, was created from tax lot 600 in 1988, as evidenced by a county deed card included with the claim.

## **Findings of Fact**

The claim indicates that the claimants desire to develop a dwelling on the 5-acre subject property, and that the use is not allowed under current land use regulations.<sup>2</sup>

The claim identifies Goals 3, 4, 5, 11 and 14; ORS 92, 195, 197 and 215; and OAR 660-004-0040(7)(e)(A), 660-011-0060(2), 660-012-0065, 660-012-0070, 660-033-0120, 660-033-0130, 660-033-0135, 340-096-0020 and 340-096-0034 as the state land use regulations that restrict the claimants' desired use of the subject property. The claim contains no information or documentation establishing that Goals 4, 5, 11 or 14 apply to the claimants' desired use of the subject property. Similarly, the claim contains no information or documentation establishing that ORS 92, 195 or 197 apply to the claimants' desired use of the subject property or restrict that use. Further, nothing in the claim establishes that OAR 660-004-0040(7)(e)(A), 660-011-0060(2), 660-012-0065, 660-012-0070, 340-096-0020 or 340-096-0034 apply to or restrict the claimants' desired use of the subject real property. The statutory provisions listed relate to land divisions and the statewide land use planning system generally. With the exception of Goal 3, none of the listed goals apply to the construction of a single dwelling on farm land. The rural residential rule listed does not apply to land zoned EFU. The listed Goal 11 and 12 implementing rules do not apply to the development of a dwelling. The provisions of OAR 340 listed either apply to composting operations (in one case) or do not exist (in the other case).

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 Jackson 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 Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.283, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, establish standards for development of dwellings on land zoned EFU.

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.)

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<sup>2</sup> The claimants summarily cite numerous state land use laws as applicable to this claim, but do not establish how the laws either apply to the claimants' desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimants' property or do not restrict the use of the claimants' property in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' use of the subject property, based on the claimants' asserted desired use.

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

At the time the claimants acquired the subject property, it was subject to Jackson County's acknowledged EFU zone.<sup>4</sup> When the claimants acquired the subject property, the claimants' desired use of the property would have been governed by the county's acknowledged EFU zone and the applicable provisions of ORS 215 then in effect.<sup>5</sup> In 1988 and 1989, ORS 215.283(1)(f) (1989 edition) generally allowed farm dwellings "customarily provided in conjunction with farm use." Non-farm dwellings were allowed under ORS 215.283(3) if they were determined to be compatible with farm use, not interfere seriously with accepted farm practices, not materially alter the stability of the land use pattern in the area and be situated on generally unsuitable land for the production of farm crops and livestock.

The claim does not establish whether or to what extent the claimants' desired development of a single dwelling on the subject property was allowed under the standards in effect when they acquired the property on March 25, 1988, for Joseph and Sharon Alves, and on June 1, 1989, for Gilbert and Bernette Schelin and Audrie Hardy.

### **Conclusions**

Some of the current dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were enacted or adopted after the claimants acquired the subject property in 1988 and 1989 and do not allow the claimants' desired development of the property. However, the claim does not establish whether or to what extent the claimants' desired use of the subject property complies with the standards for development under Goal 3 and OAR 660, as implemented through Jackson County's comprehensive plan and EFU zone and applicable provisions of ORS 215, in effect when the claimants acquired the property on March 25, 1988, for Joseph and Sharon Alves, and on June 1, 1989, for Gilbert and Bernette Schelin and Audrie Hardy.

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."

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<sup>4</sup> Jackson County's EFU zone was acknowledged by the Commission for compliance with Goal 3 on May 16, 1983.

<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, 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).

### **Findings of Fact**

The claim includes an estimate of \$40,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on the claimants' assessment of a real estate professional's opinion and comparative market analysis.

### **Conclusions**

As explained in Section V.(1) of this report, the claimants are Joseph and Sharon Alves, who acquired the subject property on March 25, 1988, and Gilbert and Bernette Schelin and Audrey Hardy, who acquired the subject property on June 1, 1989. 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 subject property is a reduction of \$40,000.

Without an appraisal or other documentation and without verification of 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, 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.

### **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 Jackson County has implemented through its current EFU zone. With the exception of amendments enacted or adopted after March 25, 1988, and June 1, 1989, Goal 3, ORS 215 and OAR 660 were in effect when the claimants acquired the subject property.

### **Conclusions**

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that some of the general statutory, goal and rule standards for dwellings on land zoned EFU are not exempt under ORS 197.352(3)(E) to the extent they were enacted or adopted after the claimants acquired the property on March 25, 1988, for Joseph and Sharon Alves, and on June 1, 1989, for Gilbert and Bernette Schelin and Audrie Hardy. Provisions of Goal 3, ORS

215 and OAR 660 in effect when the claimants acquired the subject property in 1988 and 1989 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimants acquired the subject property are also 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 use 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 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, state land use regulations 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 \$40,000. However, because the claim does not provide an appraisal or other specific 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 the 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 Joseph and Sharon Alves, Gilbert and Bernette Schelin and Audrie Hardy to use the subject property for a use permitted at the time they acquired the property on March 25, 1988, for Joseph and Sharon Alves, and on June 1, 1989, for Gilbert and Bernette Schelin and Audrie Hardy.

### **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 the claimants' development of a dwelling on the 5-acre subject property: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired their respective present interests in the subject property. 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 Joseph and Sharon Alves acquired their present interest in the subject property on March 25, 1988, and when Gilbert and Bernette Schelin and Audrie Hardy acquired their present interests in the property on June 1, 1989.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the property for the use described in this report, subject to the standards in effect on March 25, 1988, for Joseph and Sharon Alves, and June 1, 1989, for Gilbert and Bernette Schelin and Audrie Hardy. On those dates, the property was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Jackson County's acknowledged EFU zone, and the applicable provisions 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 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 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 27, 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.