

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. M130025
(BALLOT MEASURE 37) OF)	
The Estate of Leroy G. Stemmerman)	
Leroy G. Stemmerman, CLAIMANTS)	

Claimants: The Estate of Leroy G. Stemmerman, Leroy G. Stemmerman (the Claimants)

Property: Township 20S, Range 10W, Section 31, Tax lot 200

Township 21S, Range 10W, Section 6, Tax lot 300

Douglas 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 denied as to tax lot 200 because the claimants are not present owners of that tax lot and is not valid as to Leroy Stemmerman for tax lot 300 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 for Steven Stemmerman, as personal representative of the Estate of Leroy G. Stemmerman, 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 Steven Stemmerman's, as personal representative of the Estate of Leroy G. Stemmerman, division of tax lot 300 into 1.5- to 8-acre parcels and to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after May 26, 2006. These laws will not apply to Steven Stemmerman, as personal

representative of the Estate of Leroy G. Stemmerman, only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired his interest in the property as personal representative on May 26, 2006. The department acknowledges that the relief to which Steven Stemmerman, as the personal representative of the Estate of Leroy G. Stemmerman, is entitled under ORS 197.352 will not allow him to use tax lot 300 in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to Steven Stemmerman, as personal representative of the Estate of Leroy G. Stemmerman, to use tax lot 300 for the use described in this report, subject to the standards in effect on May 26, 2006. At that time, the property was subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently in effect.

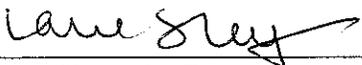
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lot 300 may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Steven Stemmerman, as personal representative of the Estate of Leroy G. Stemmerman 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 tax lot 300 imposed by private parties.

4. Any use of the subject property by Steven Stemmerman, as personal representative of the Estate of Leroy G. Stemmerman 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).

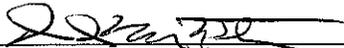
5. Without limiting the generality of the foregoing terms and conditions, in order Steven Stemmerman, as personal representative for the Estate of Leroy G. Stemmerman, to use tax lot 300, it may be necessary for him to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves Steven Stemmerman, as personal representative of the Estate of Leroy G. Stemmerman 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 tax lot 300.

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

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:


Lane Shetterly, Director
DLCD
Dated this 6th day of March, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 6th day of March, 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

March 6, 2007

STATE CLAIM NUMBER: M130025

NAMES OF CLAIMANTS: The Estate of Leroy G. Stemmerman
Leroy G. Stemmerman

MAILING ADDRESS: c/o Wallace W. Lien
1775 32nd Place NE, Suite A
Salem, Oregon 97301

PROPERTY IDENTIFICATION: Township 20S, Range 10W, Section 31
Tax lot 200
Township 21S, Range 10W, Section 6
Tax lot 300
Douglas County

DATE RECEIVED BY DAS: September 7, 2006

180-DAY DEADLINE: March 6, 2007

I. SUMMARY OF CLAIM

The claimants, Steven Stemmerman, as personal representative of the Estate of Leroy Stemmerman, and Leroy Stemmerman, seek compensation in the amount of \$909,000 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 divide the 165.12-acre subject property into nine 1.5- to 8-acre parcels and one 128-acre parcel and to develop a dwelling on each parcel.¹ Tax lot 200 is located at the geographic coordinates listed above and tax lot 300 is located at 15791 Lower Smith River Road, near Reedsport, in Douglas County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid in part. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to the Steven Stemmerman, as personal representative of the Estate

¹ The subject property includes two tax lots. Tax lot 200 consists of 155.2 acres, and tax lot 300 consists of 9.92 acres.

of Leroy Stemmerman's division of tax lot 300 into 1.5- to 8-acre parcels and to his development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after May 26, 2006. These laws will not apply to the Steven Stemmerman, as personal representative of the Estate of Leroy Stemmerman, only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property as personal representative of the estate on May 26, 2006. The department acknowledges that the relief to which the Steven Stemmerman, as personal representative of the Estate of Leroy Stemmerman is entitled under ORS 197.352 will not allow him to use tax lot 300 in the manner set forth in the claim.

The department has further determined that this claim is not valid as to tax lot 200 because the claimants are not present owners of that tax lot and is not valid as to Leroy Stemmerman for tax lot 300 because he is not a present owner of that tax lot. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On November 28, 2006, pursuant to Oregon Administrative Rule (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 criterion, whichever is later.

Findings of Fact

This claim was submitted to DAS on September 7, 2006, for processing under OAR 125, division 145. The claim identifies ORS 215.283, 215.720 to 215.750 and 215.780; Douglas County's Land Use Development Ordinances (LUDO) and zoning: and OAR 660-006-0026, 660-033-0025 and 660-033-0035 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

Steven Stemmerman, as personal representative of the Estate of Leroy G. Stemmerman, acquired tax lot 300 on May 26, 2006, as reflected by a death certificate of Leroy Stemmerman included with the claim.² Leroy Stemmerman acquired the subject property on October 23, 1959, as reflected by a warranty deed included with the claim. On October 16, 1997, Leroy Stemmerman transferred tax lot 200 to the Leroy G. Stemmerman Revocable Living Trust, with himself as trustee, as reflected by a trust agreement included with the claim. Under the terms of the trust agreement, upon the death of Leroy Stemmerman, tax lot 200 was conveyed to Leroy G. Stemmerman’s son Steven Stemmerman, as an individual, as evidenced by the first amendment to the Leroy G. Stemmerman Revocable Living Trust Agreement included with the claim.³

The Douglas County Assessor’s Office confirms Steven Stemmerman’s individual current ownership of tax lot 200 and the Estate of Leroy G. Stemmerman, Steven Stemmerman, personal representative’s ownership of tax lot 300.

Conclusions

The Estate of Leroy G. Stemmerman, Steven Stemmerman, personal representative, is an “owner” of tax lot 300 as that term is defined by ORS 197.352(11)(C), as of May 26, 2006. Neither of the claimants, the Estate of Leroy G. Stemmerman, Steven Stemmerman, personal representative, and Leroy Stemmerman, is an owner of tax lot 200 and Leroy Stemmerman is not

² In response to the draft staff report dated February 7, 2007, pursuant to OAR 125-145-0080, the claimants’ attorney submitted a letter dated February 16, 2007, which included additional information regarding the claimants’ acquisition of the subject property and included documentation to support the claimant’s assertion that tax lot 300 was not transferred to the Leroy G. Stemmerman Revocable Living Trust and instead became part of Leroy Stemmerman’s estate, of which Steven Stemmerman is personal representative, as of the date of his death. Steven Stemmerman, personal representative and successor trustee, also submitted a letter dated February 16, 2007. In that letter, he states that Leroy Stemmerman is the claimant and current owner of the subject property. However, Leroy Stemmerman’s ownership interest in the property terminated as of the date of his death, on May 26, 2006. .

³ Section 5.1 of the Leroy G. Stemmerman Revocable Living Trust provides that on the death of Leroy Stemmerman, the trust assets be distributed to Steven Stemmerman, as an individual. Therefore, title to tax lot 200 vested in Steven Stemmerman as of the date of death of Leroy Stemmerman. As an individual, Steven Stemmerman is not named as a claimant in this claim.

an owner of tax lot 300 under ORS 197.352(11)(C). Leroy Stemmerman is “family member” of, Steven Stemmerman, personal representative of the Estate of Leroy G. Stemmerman, as defined by ORS 197.352(11)(A) and acquired tax lot 300 on October 23, 1959.

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 165.12-acre subject property into nine 1.5- to 8-acre parcels and one 128-acre parcel and to develop a dwelling on each parcel, and that the use is not allowed under current land use regulations.

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. Tax lot 300 is zoned EFU-Grazing (FG) and Estuarine Conservation (EC) by Douglas County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the property is “agricultural land” as defined by Goal 3.⁴ 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.

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

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Leroy Stemmerman acquired tax lot 300 in 1959, prior to the adoption of the statewide planning goals and their implementing statutes and rules. No county zoning applied to tax lot 300 in 1959.

⁴ Tax lot 300 is “agricultural land” because it contains Natural Resources Conservation Service Class I-IV soils.

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 Estate of Leroy G. Stemmerman's family acquired tax lot 300. These laws restrict the use of tax lot 300 relative to the uses allowed when the family acquired the property.

As explained in Section V.(1), neither the Estate of Leroy G. Stemmerman nor Leroy Stemmerman has an ownership interest in tax lot 200 and Leroy Stemmerman does not have an ownership interest in tax lot 300 under ORS 197.352(11)(C). Therefore, no laws enforced by the Land Conservation and Development Commission (the Commission) or the department restrict the claimants' use of private real property in a manner that reduces the fair market value of 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 Estate of Leroy G. Stemmerman 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 \$909,000 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 a comparative market analysis included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants is the Estate of Leroy G. Stemmerman, Steven Stemmerman, personal representative, whose family member acquired tax lot 300 in 1959. As explained in Section V.(1) of this report, neither the Estate of Leroy G. Stemmerman nor Leroy Stemmerman is an owner of tax lot 200 and Leroy Stemmerman is not an owner of tax lot 300 under ORS 197.352(11)(C). Therefore, no laws restrict the claimants' use of those tax lots with the effect of reducing the fair market value of the subject property.

Under ORS 197.352, Steven Stemmerman as personal representative of the Estate of Leroy G. Stemmerman, is due compensation for land use regulations that restrict the use of tax lot 300 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 family acquired tax lot 300 restrict Steven Stemmerman, personal representative of the Estate of Leroy G. Stemmerman's 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 \$909,000.

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 tax lot 300 has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the family member acquired tax lot 300.

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 tax lot 300, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Douglas County has implemented through its current FG and EC zone. All of these land use regulations were enacted or adopted after the Estate of Leroy G. Stemmerman's family acquired tax lot 300.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of tax lot 300 were in effect when the family acquired the property on October 23, 1959. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the family acquired tax lot 300 are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

As explained in Section V.(1) of this report neither the Estate of Leroy G. Stemmerman nor Leroy Stemmerman is an owner of tax lot 200 and Leroy Stemmerman is not an owner of tax lot 300 under ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to this claim.

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 record, the department finds that the claim is not valid as to the Estate of Leroy G. Stemmerman and Leroy Stemmerman because neither is an owner of tax lot 200 and is not valid as to Leroy Stemmerman because he is not an owner of tax lot 300 . The department further finds laws enforced by the Commission or the department restrict the Estate of Leroy G. Stemmerman's desired use of tax lot 300. 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 \$909,000. 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 Estate of Leroy G. Stemmerman's desired use of tax lot 300 was allowed under the standards in effect when the claimant's family 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 tax lot 300 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 the Estate of Leroy G. Stemmerman, Steven Stemmerman, personal representative to use tax lot 300 for a use permitted at the time he acquired the property on May 26, 2006.

At the time Steven Stemmerman, as the personal representative of the Estate of Leroy G. Stemmerman, acquired an interest in tax lot 300 in May, 2006, it was zoned FG by Douglas County and subject to the current lot size and dwelling standards under Goal 3, ORS 215 and OAR 660, division 33, and as described in Section V.(2) of this report. The department acknowledges that the laws in effect at that time prohibit the claimants' desired use of 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 Steven Stemmerman, as personal representative of the Estate of Leroy G. Stemmerman, seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

Conclusions

Based on the record before the department, neither the Estate of Leroy G. Stemmerman nor Leroy Stemmerman is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because neither claimant is an owner of tax lot 200 and Leroy Stemmerman is not an owner of tax lot 300. Therefore, the department recommends that this claim be denied as to those aspects of the claim.

Based on the record, the department recommends that the claim be approved as to Steven Stemmerman, as personal representative of the Estate of Leroy G. Stemmerman for tax lot 300, 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 Steven Stemmerman's, as personal representative of the Estate of Leroy G. Stemmerman, division of tax lot 300 into 1.5- to 8-acre parcels and to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after May 26, 2006. These laws will not apply to Steven Stemmerman, as personal representative of the Estate of Leroy G. Stemmerman, only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired his interest in the property as personal representative on May 26, 2006. The department acknowledges that the relief to which Steven Stemmerman, as the personal representative of the Estate of Leroy G. Stemmerman, is entitled under ORS 197.352 will not allow him to use tax lot 300 in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to Steven Stemmerman, as personal representative of the Estate of Leroy G. Stemmerman, to use tax lot 300 for the use described in this report, subject to the standards in effect on May 26, 2006. At that time, the property was subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lot 300 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 Steven Stemmerman, as personal representative of the Estate of Leroy G. Stemmerman 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 tax lot 300 imposed by private parties.
4. Any use of the subject property by Steven Stemmerman, as personal representative of the Estate of Leroy G. Stemmerman 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 Steven Stemmerman, as personal representative for the Estate of Leroy G. Stemmerman, to use tax lot 300, 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 Steven Stemmerman, as personal representative of the Estate of Leroy G. Stemmerman 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 tax lot 300.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on February 7, 2007. 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.