Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2524
Phone: (503) 373-0050
First Floor/Coastal Fax: (503) 378-6033
Second Floor/Director's Office Fax: (503) 378-5518
Third Floor/Measure 37 Fax: (503) 378-5318
Web Address: http://www.oregon.gov/LCD

March 27, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Numbers M130182

Claimants: Virgil M. and Frances P. Ellett

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Final Staff Report and Recommendation of the Department of Land Conservation and Development, and the Final Order.

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

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 COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Virgil M. Ellett and Frances Pauline Ellett, CLAIMANTS	))))	FINAL ORDER CLAIM NO. M130182

Claimants: Virgil M. Ellett and Frances Pauline Ellett (the Claimants)

Property: Township 1N, Range 12E, Section 1, Tax lot 2000
Wasco 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 Virgil and Frances Ellett's 1) division of approximately 86.75 acres of the 106.35-acre subject property into 24 parcels of between 2 and 12 acres and development of a dwelling on each parcel, 2) development of commercial and light industrial uses on approximately 11.24 acres and 3) development of a commercial RV and tent campground on approximately 4.9 acres: applicable provisions of Goal 14 and OAR 660-004-0040, adopted after each claimant acquired 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 Virgil Ellett acquired the property on April 23, 1956, and when Frances Ellett acquired the property on August 23, 1993. The department acknowledges that the relief to which Frances Ellett is entitled under ORS 197.352 will not allow her to use the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on when Virgil Ellett acquired the property on April 23, 1956, and when Frances Ellett acquired the

property on August 23, 1993. On August 23, 1993, the property was subject to the applicable provisions of Goal 14, as implemented through the county's acknowledged comprehensive plan 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 subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

This Order is entered by the Deputy 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

Cora R Parker

Cora R. Parker, Deputy Director
DLCD
Dated this 28th day of March, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 28th 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 28, 2007

STATE CLAIM NUMBER:	M130182
NAMES OF CLAIMANTS:	Virgil M. Ellett Frances Pauline Ellett
MAILING ADDRESS:	3715 Browns Creek Road The Dalles, Oregon 97058
PROPERTY IDENTIFICATION:	Township 1N, Range 12E, Section 1 Tax lot 2000 Wasco County
OTHER CONTACT INFORMATION:	Steven B. Andersen PO Box 135 Mosier, Oregon 97040
DATE RECEIVED BY DAS:	October 3, 2006
180-DAY DEADLINE:	April 1, 2007

I. SUMMARY OF CLAIM

The claimants, Virgil and Frances Ellett, seek compensation in the amount of $1,647,800 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 1) divide approximately 86.75 acres of the 106.35-acre subject property into 24 parcels of between 2 and 12 acres and develop a dwelling on each parcel, 2) develop commercial and light industrial uses on approximately 11.24 acres and 3) develop a commercial RV and tent campground on approximately 4.9 acres.[1] The subject property is located at 3715 Browns Creak Road, near The Dalles, in Wasco County. (See claim.)

---

[1] The claim as initially filed summarily indicated that the claimants desire several alternative uses for an 11.24-acre portion of the subject property, including "retail, agricultural produce, gift shop, wine tasting, bed &breakfast facilities, mini-storage and outdoor storage, RV park &campground, [and a] manufactured home (MH) park and MH subdivision." The claimants did not establish how land use regulations had the effect of reducing the property's fair market value, other than an analysis in a letter from the claimants' land use consultant stating that "mixed use commercial/light industrial/mobile home park/etc., and RV Park areas" would be valued at approximately $40,000 per acre using "a general figure that the Wasco County Assessor's office uses."

ORS 197.352 allows the department to waive certain land use regulations to allow the present owners to use the property for "a use" that was permitted at the time they acquired it. It does not authorize the department to waive

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 Virgil and Frances Ellett's 1) division of approximately 86.75 acres of the 106.35-acre subject property into 24 parcels of between 2 and 12 acres and development of a dwelling on each parcel, 2) development of commercial and light industrial uses on approximately 11.24 acres and 3) development of a commercial RV and tent campground on approximately 4.9 acres: applicable provisions of Statewide Planning Goal 14 (Urbanization) and Oregon Administrative Rule (OAR) 660-004-0040, adopted after each claimant acquired the 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 Virgil Ellett acquired the property in 1956 and when Frances Ellett acquired the property in 1993. The department acknowledges that the relief to which Frances Ellett is entitled under ORS 197.352 will not allow her to use the subject property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On January 30, 2007, 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.

The comments do 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. (See the comment letters in the department's claim file.)

---

regulations to allow multiple alternative uses, particularly where the claim does not establish that those uses are not mutually exclusive and does not establish how specific land use regulations that may preclude those uses have had the effect of reducing the property's fair market value. In addition, the department cannot evaluate multiple alternative uses through a single claim. Accordingly, the department has evaluated this claim based on the claimants' generally described desire to develop commercial or light industrial uses on the 11.29-acre portion of the property, which is the desired use of that portion of the property that the claimants appear to have used to evaluate the asserted reduction in value. If the claimants wish to make a claim for a different use, the claimants are free to submit a new claim.

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 October 3, 2006, for processing under OAR 125, division 145. The claim identifies ORS 92, 197 and 215, OAR 660 and provisions of Wasco County zoning ordinance 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 Virgil Ellett acquired the subject property on April 23, 1956, as reflected by a warranty deed included with the claim. Virgil Ellett conveyed an interest in the subject property to his wife, claimant Frances Ellett, on August 23, 1993, as evidenced by a warranty deed included with the claim. On October 6, 2000, the claimants transferred their interest in the subject property to two trusts, the Virgil Ellett Revocable Living Trust and the Frances Pauline Ellett Revocable Living Trust, with themselves as trustees, as evidenced by warranty deeds included

with the claim.[2] The Wasco County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Virgil and Frances Ellett, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C). Virgil Ellett has been an owner since April 23, 1956. Frances Ellett has been an owner since August 23, 1993. Virgil Ellett is a "family member" of Frances Ellett as that term is defined by ORS 197.352(11)(A).

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 1) divide approximately 86.75 acres of the 106.35-acre subject property into 24 parcels of between 2 and 12 acres and develop a dwelling on each parcel, 2) develop commercial and light industrial uses on approximately 11.24 acres and 3) develop a commercial RV and tent campground on approximately 4.9 acres. The claim also indicates that the current zoning prohibits the desired use.[3]

The claim is based on the provisions of state law that regulate rural residential zoning. The claimants' property is zoned by Wasco County as Rural Residential (RR-10) with Flood Hazard, Geological Hazard and Sensitive Wildlife (Big Game Winter Range Area in High Elevation Area) overlays. The RR-10 zone is consistent with Goal 14, which generally requires that land outside of urban growth boundaries be used for rural uses. Wasco County's RR-10 zone was adopted on September 16, 1999, and requires a minimum of 10 acres for the creation of a new lot or parcel.

Goal 14 was effective on January 25, 1975, and requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and efficient transition from rural to urban land use. In 2000, as a result of a 1986 Oregon Supreme Court decision,[4] the Commission amended Goal 14 and adopted OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas), which was effective on October 4, 2000.
The rule states that if a county rural residential zone in effect on October 4, 2000, specifies a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed

[2] Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.
[3] 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 these regulations either do not apply to the claimants' property or do not restrict the claimants' desired use of the property with the effect of reducing its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' desired use of the subject property, based on the claimants' description of that desired use.
[4] *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

the minimum lot size that is already in effect (OAR 660-004-0040(7)(c)). Some relief from this provision is available for lots or parcels having more than one permanent habitable dwelling pursuant to OAR 660-004-0040(7)(h). The rule also provides that a county's minimum lot size requirement in a rural residential zone shall not be amended to allow a smaller minimum lot size without approval of an exception to Goal 14 (OAR 660-004-0040(6)). Because Wasco County's rural residential zone was in effect on October 4, 2000, and requires a minimum lot size of 10 acres, the minimum lot size for any new lot or parcel must equal or exceed 10 acres.

Virgil Ellett acquired the subject property in 1956, prior to the adoption of the statewide planning goals and their implementing statutes and rules. At that time, the property was not zoned by Wasco County.

Conclusions

The minimum lot size requirements for rural residential lots or parcels established by Goal 14 and OAR 660-004-0040 were adopted since Virgil Ellett acquired the subject property in 1956 and do not allow the desired division of the property. These regulations restrict the use of the subject property relative to uses permitted when Virgil Ellett acquired it.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. 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 regulations (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

Findings of Fact

The claim includes an estimate of $1,647,800 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' consulting land use planner's assessment of the property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Virgil Ellett who acquired the subject property on April 23, 1956, and his wife Frances Ellett. 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 Virgil Ellett 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 $1,647,800.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including Goal 14 and OAR 660-004-0040, which Wasco County has implemented through its RR-10 zone. Both of these land use regulations were adopted after Virgil Ellett 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 none of the general goal and rule restrictions on division of rural residential land were in effect when Virgil Ellett acquired the subject property in 1956. As a result, these laws are not exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other 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..

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' desired use of the subject property. The claim asserts

that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by $1,647,800. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the property was allowed under the standards in effect when Virgil Ellett 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 Virgil Ellett to use the subject property for a use permitted when he acquired the property on April 23, 1956, and to allow Frances Ellett to use the property for a use permitted when she acquired the property on August 23, 1993.

At the time Frances Ellett acquired an interest in the subject property on August 23, 1993, it was subject to Wasco County's acknowledged Forest-Farm (FF-10) zone, in addition to flood hazard, geological hazard and sensitive wildlife overlays. The FF-10 zone was a rural residential zone, which required a minimum of 10 acres for the creation of a new parcel and was more restrictive of division and development than Wasco County's current RR-10 zone. When Frances Ellett acquired the subject property, her desired use of the property would have been governed by the county's acknowledged comprehensive plan and land use ordinances, including the provisions of Goal 14 then in effect.[5] The department acknowledges that the claimants' desired division and development of the subject property were not allowed under the standards in effect when Frances Ellett acquired the property on August 23, 1993.

In addition to the applicable provisions of Goal 14 in effect when Frances Ellett acquired the subject property on August 23, 1993, and other laws in effect when either of the claimants acquired the subject property, there may be other laws that continue to apply to the claimants' use of the property that have not been identified in the claim. The department notes that a portion of the subject property is located in a flood plain zone and a geological hazard zone. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety. . . ." To the extent the county's flood plain and geological

---

[5] 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).

In August 1993, ORS 215.263 (1991 edition) required that divisions of land in EFU zones be "appropriate for the continuation of the existing commercial agricultural enterprise within the area" or not smaller than the minimum size in the county's acknowledged plan. ORS 215.283(1)(f) (1991 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.

hazard regulations are based on state law, these regulations would be exempt under ORS 197.352(3)(B). Nothing in this report alters the application of state land use regulations restricting uses within a floodplain or an area of geological hazard, including but not limited to Goal 7 (Natural Hazards).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

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 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).

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 Virgil and Frances Ellett's 1) division of approximately 86.75 acres of the 106.35-acre subject property into 24 parcels of between 2 and 12 acres and development of a dwelling on each parcel, 2) development of commercial and light industrial uses on approximately 11.24 acres and 3) development of a commercial RV and tent campground on approximately 4.9 acres: applicable provisions of Goal 14 and OAR 660-004-0040, adopted after each claimant acquired 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 Virgil Ellett acquired the property on April 23, 1956, and when Frances Ellett acquired the property on August 23, 1993. The department acknowledges that the relief to which Frances Ellett is entitled under ORS 197.352 will not allow her to use the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on when Virgil Ellett acquired the property on April 23, 1956, and when Frances Ellett acquired the property on August 23, 1993. On August 23, 1993, the property was subject to the applicable provisions of Goal 14, as implemented through the county's acknowledged comprehensive plan 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 subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 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.