



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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April 5, 2007

To: Interested Persons

From: Lane Shetterly, Director



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M130279*

*Claimant: Bruce Malcom*

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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	)	FINAL ORDER
COMPENSATION UNDER ORS 197.352	)	CLAIM NO. M130279
(BALLOT MEASURE 37) OF	)	
Bruce Malcolm, CLAIMANT	)	

Claimant: Bruce Malcolm (the Claimant)

Property: Township 20S, Range 5W, Section 22, Tax lots 909 and 910, Lane County  
(the Property)

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

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

ORDER

The Claim is 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 Bruce Malcolm's division of the 23-acre subject property into one 5.76-acre developed parcel, one 7.82-acre parcel and two 5-acre parcels for residential development: applicable provisions of Goal 14 and OAR 660-004-0040 adopted after the claimant acquired each of the subject tax lots. These land use regulations will not apply to the claimant 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 a portion of tax lot 909 (former tax lot 901) on October 22, 1970, and only to the extent that use was permitted when he acquired the remainder of tax lot 909 and tax lot 910 on July 13, 1977.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect when he acquired a portion of tax lot 909 on October 22, 1970, when he acquired the remainder of tax lot 909 and tax lot 910 on July 13, 1977. On July 13, 1977, the property was subject to the applicable provisions of the statewide planning goals, and in particular, Goal 14 in effect at that time.

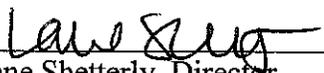
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

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

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 5<sup>th</sup> day of April, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 5<sup>th</sup> day of April, 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**

April 5, 2007

**STATE CLAIM NUMBER:** M130279

**NAME OF CLAIMANT:** Bruce Malcolm

**MAILING ADDRESS:** 79555 Fire Road  
Lorane, Oregon 97451

**PROPERTY IDENTIFICATION:** Township 20S, Range 5W, Section 22  
Tax lots 909 and 910  
Lane County

**OTHER CONTACT INFORMATION:** Karl Muller  
380 Q Street, Suite 220  
Springfield, Oregon 97477

**OTHER INTEREST IN PROPERTY:** Vaughn and Pam Eller (Tenants)  
79565 Fire Road  
Lorane, Oregon 97451

**DATE RECEIVED BY DAS:** October 13, 2006

**180-DAY DEADLINE:** April 11, 2007

**I. SUMMARY OF CLAIM**

The claimant, Bruce Malcolm, seeks compensation in the amount of \$150,000 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 claimant desires compensation or the right to divide the 23-acre subject property into one 5.76-acre developed parcel, one 7.82-acre parcel and two 5-acre parcels for residential development.<sup>1</sup> The subject property is located at 79565 Fire Road, near Lorane, in Lane 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

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<sup>1</sup> The subject property includes two tax lots. Tax lot 909 consists of 10.29 acres, and tax lot 910 consists of 12.82 acres.

by the Land Conservation and Development Commission (the Commission) or the department not apply to Bruce Malcolm's division of the 23-acre subject property into one 5.76-acre developed parcel, one 7.82-acre parcel and two 5-acre parcels for residential development: applicable provisions of Statewide Planning Goal 14 (Urbanization) and Oregon Administrative Rule (OAR) 660-004-0040, enacted or adopted after the claimant acquired each of the subject tax lots. These land use regulations will not apply to the claimant 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 a portion of tax lot 909 (former tax lot 901) on October 22, 1970, and only to the extent that use was permitted when he acquired the remainder of tax lot 909 and tax lot 910 on July 13, 1977. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On February 26, 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, 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 October 13, 2006, for processing under OAR 125, division 145. The claim identifies Goals 3 (Agricultural Lands), 4 (Forest Lands), 11 (Public Facilities and Services) and 14, ORS 197 and OAR 660 as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

#### **Conclusions**

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

## V. ANALYSIS OF CLAIM

### 1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

### Findings of Fact

The claimant, Bruce Malcolm, acquired former tax lot 901 (a portion of current tax lot 909)<sup>2</sup> on October 22, 1970, as reflected by a bargain and sale deed included in the claim, and the remainder of tax lot 909 and tax lot 910 on July 13, 1977, as reflected by a warranty deed included with the claim. The Lane County Assessor’s Office confirms the claimant’s current ownership of the subject property.

### Conclusions

The claimant, Bruce Malcolm, is an “owner” of the subject property, as that term is defined by ORS 197.352(11)(C). He has owned that portion of tax lot 909 consisting of former tax lot 901 since October 22, 1970, and the remainder of tax lot 909 and tax lot 910 since July 13, 1977.

### 2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimant’s use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

### Findings of Fact

The claim indicates that the claimant desire to divide the 23-acre subject property into one 5.76-acre developed parcel, one 7.82-acre parcel and two 5-acre parcels for residential development, and that current land use laws prohibit the desired use.<sup>3</sup>

The claim is based on the provisions of state law that regulate rural residential zoning. The claimant’s property is zoned RR10 by Lane County. The RR10 zone is consistent with Goal 14, which generally requires that land outside of urban growth boundaries be used for rural uses. Lane County’s RR10 zone was adopted in February of 1984 and requires a minimum of 10 acres for the creation of a new lot or parcel.

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<sup>2</sup> Former tax lot 901 consists of the upper northwest corner (an area of 203 feet by 210 feet) of what is now tax lot 909. On August 29, 2000, tax lot 901 was eliminated and the property became part of current tax lot 909.

<sup>3</sup> The claimant summarily cites numerous state land use laws as applicable to this claim, but does not establish how the laws either apply to the claimant’s desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of these regulations either do not apply to the claimant’s property or do not restrict the claimant’s 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 claimant’s desired use of the subject property, based on the claimant’s description of that desired use.

Goal 14 became 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,<sup>4</sup> 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 for rural residential areas designated after October 4, 2000, the county shall either require that any new lot or parcel have an area of at least 10 acres, or establish a minimum lot size of at least two acres in accordance with the requirements for an exception to Goal 14 (OAR 660-004-0040(7)(i)). The minimum lot size adopted by the county must be consistent with OAR 660-004-0018 (Planning and Zoning for Exception Areas). Because Lane County's RR10 zone was designated after October 4, 2000, new lots or parcels must be at least 10 acres in size, unless an exception to Goal 14 is taken.

The claimant acquired a portion of tax lot 909 (former tax lot 901) in 1973, prior to the adoption of the statewide planning goals and their implementing statutes and rules. At that time, it was not zoned by the county.

The claimant acquired the remainder of tax lot 909 and tax lot 910 after the adoption of the statewide planning goals, but before the Commission acknowledged Lane County's land use regulations to be in compliance with statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged Lane County's plan and land use regulations when the claimant acquired the remainder of tax lot 909 and tax lot 910, the subject property was recognized as resource land when the claimant acquired it in 1977, and the statewide planning goals, and particularly Goals 3 and 4, in addition to Goal 14, would have applied directly to the claimant's property had he sought the desired use at the time he acquired the property.<sup>5</sup> Alternatively, the claimant would have been required to establish a basis for an exception to compliance with those goals pursuant to the Goal 2 (Land Use Planning) exceptions process. However, through the county's acknowledgement process, the subject property was ultimately acknowledged as exceptions land pursuant to Goal 2, and zoned by the county for rural residential use. Therefore, while the county could now require that the property be evaluated as resource land, as would have been required in 1977, because of the property's ultimate designation as rural residential exceptions land, the county could also require that the claimant's desired use be subject to compliance directly with Goal 14.

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<sup>4</sup> *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

<sup>5</sup> The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of each county's land use regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 569 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer directly applied to such 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. *Foster v. Polk County*, 115 Or App 475 (1992); *Kenagy v. Benton County*, 115 Or App 131 (1992).

The claim does not establish whether the claimant's desired division of the subject property to create 5- to 7.82-acre parcels could have satisfied this standard.<sup>6</sup>

### **Conclusions**

The minimum lot size requirements for rural residential lots or parcels established by Goal 14 and OAR 660-004-0040 were adopted since the claimant acquired the subject property and do not allow the desired division of the property. These regulations restrict the use of the subject property relative to uses permitted when the claimant acquired it. However, when the claimant acquired a portion of tax lot 909 and tax lot 910 in 1977, the statewide planning goals, and in particular, the general requirements of Goal 14, applied directly to the property. The claim does not establish whether or to what extent the claimant's desired level of development would have been permitted under the laws in effect in 1977 when the claimant acquired that portion of the subject 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 uses that the claimant has identified. There may be other laws that currently apply to the claimant's use of the subject property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

### **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

### **Findings of Fact**

The claim includes an estimate of \$150,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on an appraisal included with the claim.

### **Conclusions**

As explained in Section V.(1) of this report, the claimant is Bruce Malcolm who acquired a portion of tax lot 909 on October 22, 1970, and the remainder of tax lot 909 and tax lot 910 on July 13, 1977. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant acquired the subject property restrict the claimant's desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$150,000.

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<sup>6</sup> When Lane County's plan was acknowledged for compliance with Goal 14 on September 13, 1984, the subject property was zoned FF-20.

Without additional evidence and documentation establishing how and to what extent the regulations identified in Section V.(2) above have had the effect of reducing the property's fair market value, 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 Lane County has implemented through its RR10 zone. With the exception of provisions of Goal 14 in effect when the claimant acquired a portion of tax lot 909 and tax lot 910 in 1977, these land use regulations were adopted after the claimant 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, with the exception of provisions of Goal 14 in effect in 1977 when the claimant acquired a portion of tax lot 909 and tax lot 910, none of the general goal and rule restrictions on division of rural residential land were in effect when the claimant acquired the subject property in 1970 and 1977 and, therefore, are not exempt under ORS 197.352(3)(E). Provisions of Goal 14 in effect when the claimant acquired a portion of tax lot 909 and tax lot 910 are exempt and will continue to apply to that portion of the subject property.

Other laws in effect when the claimant acquired the subject property are also exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's use of the property. There may be other laws that continue to apply to the claimant's use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimant should be aware that the less information he has provided to the department in his claim, the

greater the possibility that there may be additional laws that will later be determined to continue to apply to his use of the subject property.

## **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced 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 claimant's 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 \$150,000. However, without additional documentation and relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimant's desired use of the property was allowed under the standards in effect when he 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 Bruce Malcolm to use the subject property for a use permitted at the time he acquired a portion of tax lot 909 (former tax lot 901) on October 22, 1970, and the remainder of tax lot 909 and tax lot 910 on July 13, 1977.

### **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 Bruce Malcolm's division of the 23-acre subject property into one 5.76-acre developed parcel, one 7.82-acre parcel and two 5-acre parcels for residential development: applicable provisions of Goal 14 and OAR 660-004-0040 adopted after the claimant acquired each of the subject tax lots. These land use regulations will not apply to the claimant 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 a portion of tax lot 909 (former tax lot 901)

on October 22, 1970, and only to the extent that use was permitted when he acquired the remainder of tax lot 909 and tax lot 910 on July 13, 1977.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect when he acquired a portion of tax lot 909 on October 22, 1970, when he acquired the remainder of tax lot 909 and tax lot 910 on July 13, 1977. On July 13, 1977, the property was subject to the applicable provisions of the statewide planning goals, and in particular, Goal 14 in effect at that time.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

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

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on March 14, 2007. OAR 125-145 0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation.