



Oregon

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Department of Land Conservation and Development

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April 11, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130332

Claimants: Michael and Ann Strassel

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. M130332
(BALLOT MEASURE 37) OF)
Michael and Ann Strassel, CLAIMANTS)

Claimants: Michael and Ann Strassel (the Claimants)

Property: Township 3N, Range 5W, Section 25, Tax lot 1392, Washington 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 Michael and Ann Strassel's division of the 7.7-acre subject property into two or three parcels or to their development of a dwelling on each undeveloped parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after each claimant acquired the subject property. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Michael Strassel acquired the eastern 2.7-acre portion on August 9, 1958, and the western 5-acre portion on December 11, 1974; and Ann Strassel acquired the subject property on December 11, 1974.

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 when Michael Strassel acquired the eastern 2.7-acre portion on August 9, 1958, and the western 5-acre portion on December 11, 1974; and when Ann Strassel acquired the subject property on

December 11, 1974. On December 11, 1974, the subject property was subject to the provisions of ORS 215, including the interim planning goals set forth in ORS 215.515 (1973 edition).

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.

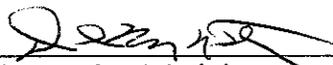
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352,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

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD
Dated this 11th day of April, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 11th 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 11, 2007

STATE CLAIM NUMBER: M130332

NAMES OF CLAIMANTS: Michael and Ann Strassel

MAILING ADDRESS: 26707 Northwest August Drive
Buxton, Oregon 97109

PROPERTY IDENTIFICATION: Township 3N, Range 5W, Section 25
Tax lot 1392
Washington County

OTHER CONTACT INFORMATION: Jim Lucas
PO Box 699
Banks, Oregon 97106

DATE RECEIVED BY DAS: October 18, 2006

180-DAY DEADLINE: April 16, 2007

I. SUMMARY OF CLAIM

The claimants, Michael and Ann Strassel, seek compensation in the amount of \$350,000 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 7.7-acre subject property into two or three parcels and to develop a dwelling on each undeveloped parcel. The subject property is located at 26707 NW August Drive, near Buxton, in Washington County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Michael and Ann Strassel's division of the 7.7-acre subject property into two or three parcels and to their development of a dwelling on each undeveloped parcel: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6, enacted or adopted after each claimant acquired the subject property. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was

permitted when Michael Strassel acquired the eastern 2.7-acre portion on August 9, 1958, and the western 5-acre portion on December 11, 1974; and Ann Strassel acquired the subject property on December 11, 1974. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 2, 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, one written comment was received in response to the 10-day notice

The comments does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letter in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of the 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 18, 2006, for processing under OAR 125, division 145. The claim identifies Goal 4, provisions of ORS 215 and OAR 660, divisions 6, and 33, and Washington County zoning 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 Michael Strassel first acquired the eastern 2.7-acre portion of the subject property on August 9, 1958, upon the death of his father, August Strassel, as reflected by a district court decree included with the claim. Michael Strassel and his wife, claimant Ann Strassel, acquired an interest in the western 5-acre portion from their family members as evidenced by a warranty deed included with the claim. However, on December 11, 1974, Michael and Ann Strassel conveyed all of their interest in the western 5-acre portion to Michael Strassel’s family members, James, Thomas and Lillian Strassel, as reflected by a bargain and sale deed included with the claim. On the same day, James, Thomas and Lillian Strassel conveyed the western 5-acre portion and their interest in the eastern 2.7-acre portion to Michael and Ann Strassel, as reflected by a bargain and sale deed included with the claim. August Strassel originally acquired the entire subject property on January 14, 1939, and February 23, 1940, as reflected by agreements included with the claim. The Washington County Assessor’s Office confirms the claimants’ current ownership of the subject property.

Conclusions

The claimants, Michael and Ann Strassel, are “owners” of the subject property as that term is defined by ROS 197.352(11)(C). Michael Strassel has been an “owner” of the eastern 2.7-acre portion since August 9, 1958, and of the western 5-acre portion since December 11, 1974. Ann Strassel has been an “owner” of the subject property since December 11, 1974. August Strassel is a “family member,” as that term is defined by ORS 197.352(11)(A), as of January 14, 1939, and February 23, 1940.

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 7.7-acre subject property into two or three parcels and to develop a dwelling on each undeveloped parcel, and that the desired use is not allowed under current land use regulations.¹

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimants' property is zoned Exclusive Forest and Conservation (EFC) by Washington County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimants' property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

The claimants' family member first acquired the subject property on January 14, 1939, and February 23, 1940; and Michael Strassel acquired the eastern 2.7-acre portion in 1958, all prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1939, 1940 or 1958.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 and provisions applicable to land zoned for forest use in ORS 215 and OAR 660, division 6, were all enacted or adopted after the claimants' family acquired the subject property 1939 and 1940 and Michael Strassel acquired the 2.7-acre portion in 1958 and do not allow the desired division or development of the property. These laws restrict the use of the property relative to the uses allowed when the claimants' family acquired the property and Michael Strassel acquired the eastern 2.7-acre portion.

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."

¹ 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.

Findings of Fact

The claim includes an estimate of \$350,000 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 realtor's opinion letter included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are Michael and Ann Strassel whose family acquired the subject property in 1939 and 1940. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants' family 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 \$350,000.

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 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 since the claimants' family acquired the property.

4. Exemptions Under ORS 197.352(3)

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

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, which Washington County has implemented through its current EFC zone. All of these land use regulations were enacted or adopted after the claimants' family acquired the subject property and Michael Strassel acquired the eastern 2.7-acre portion of the subject property.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on division and development of the claimants' property were in effect when the claimants' family acquired the subject property in 1939 and 1940 and Michael Strassel acquired the eastern 2.7-acre portion in 1958. As a result, these laws are not exempt under ORS 197.352. Laws in effect when the claimants' family acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, 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 \$350,000. 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 claimants' desired use of the subject property was allowed under the standards in effect when their 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 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 Michael and Ann Strassel to use the subject property for a use permitted at the time Michael Strassel acquired the eastern 2.7-acre portion on August 9, 1958, and the western 5-acre portion on December 11, 1974; and when Ann Strassel acquired the subject property on December 11, 1974.

Michael Strassel acquired the western 5-acre portion and Ann Strassel acquired the subject property on December 11, 1974, after the adoption of Senate Bill 100 (Chapter 80, Oregon Laws 1973) effective on October 5, 1973, but before the adoption of the statewide planning goals effective on January 25, 1975.

During the period between October 5, 1973, and January 25, 1975, ORS 197.175(1) and 197.280 (1973 editions) required, in addition to any local plan or zoning provisions, that cities and counties exercise their planning responsibilities in accordance with the interim land use planning goals set forth in ORS 215.515 (1973 edition). *Petersen v. Klamath Falls*, 279 Or 249 (1977); *see also, Meeker v. Board of Comm'rs*, 287 Or 665 (1979) (review of a subdivision is an exercise of planning responsibilities requiring application of the goals); *State Housing Council v. Lake Oswego*, 48 Or App. 525 (1981) (noting that while "[l]and use planning responsibility is not defined in ORS ch 197, the Supreme Court has interpreted that term as including annexation approvals, *subdivision approvals* [emphasis added] and partition approvals") citing *Petersen*, *Meeker* and *Alexanderson v. Polk County*, 285 Or 427 (1980). The claimants' desired use

includes subdivision of their land. If the claimants had sought to create that use in 1974, as a matter of law, the use would have been subject to the interim planning goals at ORS 215.515.

The "interim" land use goals were set forth in ORS 215.515(1)(a) to (j) (1973 edition) as follows: (a) "To preserve the quality of the air, water and land resources of the state," (b) "To conserve open space and protect natural and scenic resources," (c) "To provide for the recreational needs of citizens of the state and visitors," (d) "To conserve prime farm lands for the production of crops," (e) "To provide for the orderly and efficient transition from rural to urban land use," (f) "To protect life and property in areas subject to floods, landslides and other natural disasters," (g) "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation," (h) "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development," (i) "To diversify and improve the economy of the state" and (j) "To ensure that the development of properties within the state is commensurate with the character and the physical limitations of the land." ORS 215.515 (1973 edition).²

No information has been provided establishing whether or to what extent Michael Strassel's desired division of the western 5-acre portion and Ann Strassel's desired division of the subject property for residential development complies with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time Michael Strassel acquired the western 5-acre portion and Ann Strassel acquired the subject property on December 11, 1974.

In addition to the applicable provisions of ORS 215, including the interim planning goals in effect when Michael Strassel acquired the western 5-acre portion and Ann Strassel acquired the subject property on December 11, 1974, and other laws in effect when the claimants acquired the subject property, there may be other laws that apply to the claimants' use of the property that have not been identified in the claim. In addition, the department notes that ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-0029, include standards for siting dwellings in forest zones. Those provisions include fire protection standards for dwellings and for surrounding forest lands. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . ." Accordingly, the siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to the claimants' use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the

² Goal 4 replaced the interim goals with regard to forest resource land, and went into effect on January 25, 1975, "to conserve forest lands for forest uses" and required, "Lands suitable for forest uses shall be inventoried and designated as forest lands. Existing forest land uses shall be protected unless proposed changes are in conformance with the comprehensive plan." Those forest uses were defined as follows: "(1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock." Specifically, Goal 4 only allowed land divisions that would protect commercial forest lands for commercial forest uses. Dwellings in forest zones could only be allowed if found to be "necessary and accessory" to one of the enumerated forest uses listed in Goal 4.

claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the 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 their 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.

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 Michael and Ann Strassel's division of the 7.7-acre subject property into two or three parcels or to their development of a dwelling on each undeveloped parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after each claimant acquired the subject property. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Michael Strassel acquired the eastern 2.7-acre portion on August 9, 1958, and the western 5-acre portion on December 11, 1974; and Ann Strassel acquired the subject property on December 11, 1974.
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 when Michael Strassel acquired the eastern 2.7-acre portion on August 9, 1958, and the western 5-acre portion on December 11, 1974; and when Ann Strassel acquired the subject property on December 11, 1974. On December 11, 1974, the subject property was subject to the provisions of ORS 215, including the interim planning goals set forth in ORS 215.515 (1973 edition).
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 21, 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..