Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
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April 12, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130343

Claimants: Paul and Ruth Villwock

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 Ruth Villwock, CLAIMANT	))))	FINAL ORDER A CLAIM NO. M130343

Claimant: Ruth Villwock (the Claimant)

Property: Township 7S, Range 5W, Section 21, Tax lot 1300
Township 7S, Range 5W, Section 22, Tax lot 1400
Polk 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 Ruth Villwock's division of the 131.53-acre subject property into one 30-acre parcel and twenty approximately 5-acre parcels, to her development of a dwelling on each 5-acre parcel or to her commercial development of the 30-acre parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after May 6, 1976. These land use regulations will not apply to Ruth Villwock only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on May 6, 1976.

2. The action by the State of Oregon provides the state's authorization to Ruth Villwock to use the subject property for the use described in this report, subject to the standards in effect on May 6, 1976. On that date, the property was subject to applicable provisions of Goal 3 and ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Ruth Villwock 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 Ruth Villwock 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 Ruth Villwock to use the subject property, it may be necessary for her 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 Ruth Villwock 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 her.

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 12th day of April, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 12th 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."

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 Paul Villwock, CLAIMANT	))))	FINAL ORDER B CLAIM NO. M130343

Claimants: Paul Villwock (the Claimant)

Property: Township 7S, Range 5W, Section 21, Tax lot 1300
Township 7S, Range 5W, Section 22, Tax lot 1400
Polk 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 denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 chapter 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 chapter 125, division 145, and ORS chapter 293.

FOR DLCD AND THE LAND CONSERVATION AND DEVELOPMENT COMMISSION:

Lane Shetterly, Director
DLCD
Dated this 12th day of April, 2007.

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 12th day of April, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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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)

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

April 12, 2007

STATE CLAIM NUMBER:	M130343
NAME OF CLAIMANT:	Ruth Villwock Paul Villwock
MAILING ADDRESS:	Ruth Villwock 695 NE Dallas Drive Dallas, Oregon 97338 Paul Villwock 600 Perrydale Road Dallas, Oregon 97338
PROPERTY IDENTIFICATION:	Township 7S, Range 5W, Section 21 Tax lot 1300 Township 7S, Range 5W, Section 22 Tax lot 1400 Polk County
DATE RECEIVED BY DAS:	October 19, 2006
180-DAY DEADLINE:	April 17, 2007

I. SUMMARY OF CLAIM

The claimants, Ruth Villwock and Paul Villwock, seek compensation in the amount of $5,811,710 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 131.53-acre subject property into one 30-acre parcel and twenty approximately 5-acre parcels, to develop a dwelling on each 5-acre parcel and to develop the 30-acre parcel for commercial use. The subject property is located at Perrydale Road and King Valley Highway, near Dallas, in Polk 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 in part. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department

not apply to Ruth Villwock's division of the 131.53-acre subject property into one 30-acre parcel and twenty approximately 5-acre parcels, to her development of a dwelling on each 5-acare parcel or to her commercial development of the 30-acre parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after May 6, 1976. These laws will not apply to the claimant only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on May 6, 1976.

The department has determined that this claim is not valid for Paul Villwock, because he has not established his ownership of the property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 6, 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 19, 2006, for processing under OAR 125, division 145. The claim identifies Exclusive Farm Use (EFU) 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 Ruth Villwock originally acquired the subject property on October 1, 1946, as reflected by a deed included with the claim. However, on May 5, 1976, the claimant transferred all of her interest in the property to her husband, Ernest Villwock, as reflected by a quitclaim deed included with the claim. On May 6, 1976, Ernest Villwock transferred his interest in the property to both Ruth Villwock and Paul Villwock as co-trustees of the Ernest Villwock Equity Trust, as reflected by a quitclaim deed included with the claim. On October 9, 2002, Ruth Villwock, "as Surviving Trustee of the Ernest Villwock Equity Trust," conveyed the property to herself, individually.

The Polk County Assessor's Office confirms Ruth Villwock's current ownership of the subject property.

Conclusions

Claimant Ruth Villwock is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of May 6, 1976. The subject property has been owned by a "family member" of the claimant, as that term is defined in ORS 197.352(11)(A) since October 1, 1946.

Claimant Paul Villwock is not a present "owner" of the subject property as that term is defined in ORS 197.352(11)(C).

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 131.53-acre subject property into one 30-acre parcel and twenty approximately 5-acre parcels, to develop a dwelling on each 5-acre parcel and to develop the 30-acre parcel for commercial use, and that current land use regulations prohibit the desired use.

The claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land. The subject property is zoned EFU by Polk County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the

claimant's property is "agricultural land" as defined by Goal 3.[1] Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.283, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres, establish standards for the development of dwellings on existing or any proposed parcel on that land, and restrict commercial uses permitted on EFU-zoned land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone. ORS 215.283(1) identifies a limited number of commercial uses permitted on EFU-zoned land. ORS 215.283(2) allows other commercial activities on EFU-zoned, provided those commercial uses are in conjunction with farm use, and subject to standards set forth in ORS 215.296. OAR 660-033-0120, Table 1 establishes the list of commercial activities allowed on agricultural lands under ORS 215.283, which is generally restricted to commercial activities in conjunction with farm use.

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

The Villwock family acquired the subject property in 1946, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1946.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the Villwock family acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when the Villwock family acquired the property.

As explained in Section V.(1) above, Paul Villwock is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict his use of the subject property with the effect of reducing its fair market value.

[1] The claimant's property is "agricultural land" because it contains National Resources Conservation Service Class I–IV soils.

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 $5,811,710 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on the claimants' assessment of the value of the subject property.

Conclusions

As explained in Section V.(1) of this report, the claimants are Ruth Villwock and Paul Villwock, whose family acquired the subject property in 1946. Paul Villwock is no longer an owner of the subject property and, therefore, is not entitled to compensation under ORS 197.352. Under ORS 197.352, Ruth Villwock is due compensation for land use regulations that restrict the use of the 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 Villwock family acquired the subject property restrict Ruth Villwock's desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of $5,811,710.

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 since the Villwock 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 3, ORS 215 and OAR 660, division 33, which Polk County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after the Villwock family acquired the subject property.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the Villwock family acquired the property on October 1, 1946. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the Villwock family acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

As explained in Section V.(1) of this report, Paul Villwock is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352is not relevant to his claim.

VI. FORM OF RELIEF

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

Findings of Fact

Based on the findings and conclusions set forth in this report, no laws enforced by the Commission or the department restrict Paul Villwock's desired use of the subject property because he is not a present owner of the subject property. Laws enforced by the Commission or the department restrict Ruth Villwock'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 $5,811,710. 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 Ruth Villwock's desired use of the subject property was allowed under the standards in effect when the Villwock 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 Ruth Villwock to use the subject property for a use permitted at the time she acquired the property on May 6, 1976.

At the time Ruth Villwock acquired the subject property in 1976, it was zoned EFU by Polk County. The claimant acquired the subject property after the adoption of the statewide planning goals, but before the Commission acknowledged Polk County's land use regulations to be in

compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.[2] Because the Commission had not acknowledged the county's plan and land use regulations when Ruth Villwock acquired the subject property on May 6, 1976, the statewide planning goals, and Goal 3 in particular, applied directly to the property when she acquired it.[3]

Under the Goal 3 standards in effect on May 6, 1976, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition). ORS 215.213(2) (1973 edition) identified non-farm uses conditionally allowed on farm land, and specifically ORS 215.213(2)(a) allowed commercial activities only to the extent the activities were "in conjunction with farm use."

No information has been presented in the claim to establish that the claimants' desired division and residential and commercial development of the subject property satisfies the standards for farm or non-farm dwellings or commercial use under ORS 215.213 (1973 edition).

In addition to the applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, in effect on May 6, 1976, and other laws in effect when Ruth Villwock acquired the subject property, there may be other laws that apply to her 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 Ruth Villwock seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use, and depending on when they were enacted or adopted, may continue to apply to the subject property. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D) and will continue to apply to the subject property on that basis.

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. Ruth Villwock should be aware that the less information she has provided to the department in her claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to her use of the subject property.

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[2] Polk County's comprehensive plan and land use regulations were acknowledged by the Commission for compliance with Goal 3 on April 22, 1988.

[3] 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 comprehensive plan and implementing 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 3 (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 applied directly 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. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

Conclusions

Based on the record before the department, claimant Paul Villwock has not established that he is entitled to relief under ORS 197.352(1), as a result of land use regulations enforced by the Commission or the department, because he is not an owner of the subject property. Therefore, the department recommends that Paul Villwock's claim be denied.

Based on the record, the department recommends that Ruth Villwock's 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 Ruth Villwock's division of the 131.53-acre subject property into one 30-acre parcel and twenty approximately 5-acre parcels, to her development of a dwelling on each 5-acre parcel or to her commercial development of the 30-acre parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after May 6, 1976. These land use regulations will not apply to Ruth Villwock only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on May 6, 1976.

2. The action by the State of Oregon provides the state's authorization to Ruth Villwock to use the subject property for the use described in this report, subject to the standards in effect on May 6, 1976. On that date, the property was subject to applicable provisions of Goal 3 and ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Ruth Villwock 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 Ruth Villwock 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 Ruth Villwock to use the subject property, it may be necessary for her 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 Ruth Villwock 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 her.

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.