



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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April 18, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130420

Claimant: Dean C. Engelson

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 A
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M130420
(BALLOT MEASURE 37) OF)	
Dean C. Engelson, CLAIMANTS)	

Claimants: Dean C. Engelson (the Claimants)

Property: Township 33S, Range 7VE, Section 26, Tax lot 200, Klamath 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 Dean Engelson's division of tax lot 200 into two-acre parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. 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 tax lot 200 on July 23, 1969.
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 in 1969.
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 tax lot 200 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

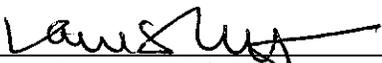
“permit” as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the tax lot 200 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 tax lot 200, 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 tax lot 200 by the claimant.

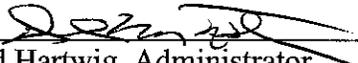
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352,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

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD
Dated this 18th day of April, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 18th 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) FINAL ORDER B
COMPENSATION UNDER ORS 197.352) CLAIM NO. M130420
(BALLOT MEASURE 37) OF)
Dean C. Engelson, CLAIMANT)

Claimant: Dean C. Engelson (the Claimant)

Property: Township 33S, Range 7VE, Section 26, Tax lot 300, Klamath 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 18th day of April, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 18th day of April, 2007.

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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 18, 2007

STATE CLAIM NUMBER: M130420

NAME OF CLAIMANT: Dean C. Engelson

MAILING ADDRESS: PO Box 952
Shingle Springs, California 95682

PROPERTY IDENTIFICATION: Township 33S, Range 7VE, Section 26
Tax lots 200 and 300
Klamath County

OTHER CONTACT INFORMATION: Michael L. Spencer
409 Pine Street, Suite 204
Klamath Falls, Oregon 97601

DATE RECEIVED BY DAS: October 25, 2006

180-DAY DEADLINE: April 23, 2007

I. SUMMARY OF CLAIM

The claimant, Dean Engelson, seeks compensation in the amount of \$400,000 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 27.6-acre subject property consisting of tax lots 200 and 300 into 2-acre parcels and to develop a dwelling on each parcel. The subject property is located at the geographic listed above, near Chiloquin, in Klamath 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 Dean Engelson's division of tax lot 200 into two-acre parcels and to his development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33. These laws will not apply to the claimant only to the extent necessary to allow him to use tax lot 200 for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 200 on July 23, 1969.

The department has further determined that the claim is not valid as to tax lot 300 because state land use regulations do not restrict the claimant's desired use of this tax lot relative to uses permitted on this tax lot when the claimant acquired it on July 15, 1971.¹ (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments

OAR 125-145-0100 provides an opportunity for the claimant or the claimant's authorized agent and any third parties to submit written comments, evidence and information in response to the draft staff report and recommendation. Such response must be filed no more than 10 calendar days after the date this report is mailed to the claimant and any third parties. Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report.

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 25, 2006, for processing under OAR 125, division 145. The claim identifies Goals 2 (Land Use Planning) and 3, provisions of ORS 92, 197 and 215 and OAR 660, divisions 4, 6, and 33, 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.

¹ In response to the draft staff report dated March 29, 2007, the claimant's attorney submitted a letter dated April 2, 2007. The department has considered the comment.

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, Dean Engelson, acquired tax lot 200 on July 23, 1969, and acquired tax lot 300 on July 15, 1971, as reflected by warranty deeds included with the claim. In 1995, the claimant transferred the subject property to a revocable trust, the Engelson Trust.² The Klamath County Assessor’s Office confirms the claimant’s current ownership of the subject property.

Conclusions

The claimant, Dean Engelson, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of July 23, 1969, for tax lot 200 and as of July 15, 1971, for tax lot 300.

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 desires to divide the 27.6-acre subject property into 2-acre parcels and to develop a dwelling on each parcel, and that the use is not allowed under current land use regulations.³

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimant’s property is zoned EFU-G by Klamath 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 3.⁴ Goal 3

² Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

³ The claimant summarily lists 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 the regulations either do not apply to the claimant’s property or do not restrict the use of the claimant’s property with the effect of reducing its fair market value. Without any explanation of how these land use regulations apply to the claimant’s desired use of the property, the department cannot evaluate how or whether they apply. 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 his desired use.

⁴ The claimant’s property is “agricultural land” because it contains Natural Resources Conservation Service Class I–VI soils.

became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

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

ORS 215.780(1)(b) establishes a 160-acre minimum size for the creation of new lots or parcels in EFU zones that are designated rangeland and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

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

The claimant acquired tax lot 200 on July 23, 1969, and tax lot 300 on July 15, 1971, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. However, Klamath County has verified that the property has no legal access, and had no legal access when the claimant acquired it.

The department is not aware of any law that restricted the claimant from dividing tax lot 200 when he acquired it on July 23, 1969, despite the lack of legal access to the property. However, on October 8, 1969, Klamath County adopted a Revised Subdivision Ordinance that required "vehicular access to individual lots" to be created by any partition of the property. Klamath County Ordinance No. 14, section 9.01(i). In addition, the ordinance required that "subdivision of the land shall be such that each lot shall abut upon a public street, way or easement * * *." Because there is no legal access to the subject property, the claimant had no legal right to carry out his desired use of tax lot 300 when he acquired that tax lot in 1971.

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 claimant acquired the subject property in 1969 and 1971 and do not allow the desired division or residential development of the property. These laws restrict the use of tax lot 200 relative to the uses allowed when the claimant acquired that tax lot. However, because there is no legal access to the subject property, and because legal access was required for partition or subdivision when the claimant acquired tax lot 300 in 1971, the claimant did not have the legal right to carry out his desired use of tax lot 300 when he acquired that tax lot in 1971. Therefore, state land use regulations do not restrict the claimant's desired use of tax lot 300 relative to uses permitted when the claimant acquired that tax lot.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the use that the 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 for tax lot 200, 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 \$400,000 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 the claimant's assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimant is Dean Engelson who acquired tax lot 200 on July 23, 1969, and tax lot 300 on July 15, 1971. As explained in Section V.(2), no state land use regulations restrict the claimant's desired use of tax lot 300 relative to uses permitted on that tax lot when the claimant acquired it in 1971. Because the subject property does not have legal access, which was required under a local ordinance when the claimant acquired tax lot 300, the claimant did not have the legal right to carry out his desired use of tax lot 300 when he acquired that tax lot in 1971. Therefore, no state land use regulations have had the effect of reducing the fair market value of that tax lot.

Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of tax lot 200 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 tax lot 200 restrict the claimant's desired use of that tax lot. The claimant estimates that the effect of the regulations on the fair market value of the property is a reduction of \$400,000.

Without an appraisal or other documentation, and without verification of the extent to which the regulations have restricted the claimant's desired use of only tax lot 200, 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 tax lot 200 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 applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Klamath County has implemented through its current EFU-G zone. All of these land use regulations were enacted or 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 none of the general statutory, goal and rule restrictions on division and development of the claimant's property were in effect when the claimant acquired it in 1969 and 1971. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimant acquired the subject property are 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 tax lot 200 until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use for tax lot 200, 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 use 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 the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to his use of tax lot 200.

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 laws that restrict the use of the subject 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 subject 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 do not restrict the claimant's desired use of tax lot 300 relative to uses permitted when the claimant acquired that tax lot because the claimant did not have the legal right to carry out his desired use of tax lot 300 when he acquired that tax lot in 1971. However, because the local ordinance that required legal access was not in effect when the claimant acquired tax lot 200 in 1969, laws enforced by the Commission or the department do restrict the claimant's desired use of tax lot 200. 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 \$400,000. 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 tax lot 200, 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 tax lot 200 was allowed under the standards in effect when he acquired that tax lot. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of tax lot 200 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 Dean Engelson to use tax lot 200 for a use permitted at the time he acquired tax lot 200 on July 23, 1969.

Conclusions

Based on the record, the claimant has not established that he is entitled to relief under ORS 197.352(1) for tax lot 300 as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that the claim for tax lot 300 be denied. The department otherwise recommends that the claim for tax lot 200 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 Dean Engelson's division of tax lot 200 into two-acre parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. 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 tax lot 200 on July 23, 1969.
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 in 1969.
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 tax lot 200 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 tax lot 200 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 tax lot 200, 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 tax lot 200 by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 29, 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.