Oregon
Theodore R. Kulongoski, Governor

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August 21, 2007

To: Interested Persons

From: Lane Shetterly, Director

*Re: Ballot Measure 37 (ORS 197.352) Claim Number M130811*

*Claimant: Larry G. Riepma*

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

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

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

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| IN THE MATTER OF THE CLAIM FOR<br>COMPENSATION UNDER ORS 197.352<br>(BALLOT MEASURE 37) OF<br>Larry G. Riepma, CLAIMANT | )<br>)<br>)<br>) | FINAL ORDER<br>CLAIM NO. M130811 |

Claimant: Larry G. Riepma (the Claimant)

Property: Township 12S, Range 45E, Section 22BD, Tax lots 100 and 200
Baker 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 for tax lot 100 as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

The Claim is approved for tax lot 200 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 Larry Riepma's partition of tax lot 200 into parcels of at least two acres each: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after December 15, 1976. These land use regulations 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 it on December 15, 1976.

2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lot 200 for the use described in this report, subject to the standards in effect on December 15, 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 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 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 Manager for the Measure 37 Services Division 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

Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 21st day of August, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Janice Dean, SSD Administrator
DAS, State Services Division
Dated this 21st day of August, 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**

August 21, 2007

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| **STATE CLAIM NUMBER:** | M130811 |
| **NAME OF CLAIMANT:** | Larry G. Riepma |
| **MAILING ADDRESS:** | 8889 Cherry Lane<br>Nampa, Idaho 83687 |
| **PROPERTY IDENTIFICATION:** | Township 12S, Range 45E, Section 22BD<br>Tax lots 100 and 200<br>Baker County[1] |
| **DATE RECEIVED BY DAS:** | November 16, 2006 |
| **180-DAY DEADLINE:**[2] | May 9, 2008 |

## I. SUMMARY OF CLAIM

The claimant, Larry Riepma, seeks compensation in the amount of $300,000 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 10.63-acre subject property into four to five parcels of at least two acres each.[3] The subject property is located along Snake River Road, near Richland, in Baker County. (See claim.)

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[1] The subject property includes two tax lots. Tax lot 100 consists of 4.45 acres, and tax lot 200 consists of 6.18 acres.

[2] ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

[3] The claim also indicates that the claimant desires to sell or transfer the newly created parcels for development. In effect, the claimant requests that a decision of the department to "not apply" (waive) certain laws as set forth in this report be transferable with the property. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. A determination of transferability is beyond the scope of relief that the department may grant under ORS 197.352. The Oregon Department of Justice has advised the department that "[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost."

## 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 Larry Riepma's partition of tax lot 200 into parcels of at least two acres each: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after December 15, 1976. 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 it on December 15, 1976. (See the complete recommendation in Section VI. of this report.)

The department has further determined that the claim is not valid as to tax lot 100 because the claimant's desired division of the subject property was prohibited when the claimant acquired it. Neither the Commission nor the department has enforced laws that restrict the claimant's use of tax lot 100 relative to the uses permitted when the claimant acquired it. Therefore, no laws enforced by the Commission or the department have the effect of reducing the fair market value of tax lot 100. (See the complete recommendation in Section VI. of this report.)

## III. COMMENTS ON THE CLAIM

**Comments Received**

On May 25, 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 November 16, 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**

The claimant, Larry Riepma, acquired tax lot 200 on December 15, 1976, and tax lot 100 on December 29, 1977, as reflected by warranty deeds included with the claim. However, the deed by which the claimant acquired tax lot 100 contained a restrictive covenant that prohibited the claimant from dividing tax lot 100 or using it for commercial purposes. The Baker County Assessor's Office confirms the claimant's current ownership of the subject property.

**Conclusions**

The claimant, Larry Riepma, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of December 15, 1976, for tax lot 200, and as of December 29, 1977, for tax lot 100.

**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 acquired the property.

**Findings of Fact**

The claim indicates that the claimant desires to divide the 10.63-acre subject property into four to five parcels of at least two acres each, 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 claimant's property is zoned by Baker County as EFU 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 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.

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.

The claimant acquired the subject property after the adoption of the statewide planning goals, but before the Commission acknowledged Baker County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.[5] At that time, the property was zoned by Baker County as Agricultural Zone (A-2). However, because the Commission had not acknowledged the county's plan and land use regulations when the claimant acquired tax lot 200 on December 15, 1976, and tax lot 100 on December 29, 1977, the statewide planning goals, and Goal 3 in particular, applied directly to the claimant's property when he acquired it.[6]

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the claimant's opportunity to divide the subject property when he acquired it in 1976 and 1977 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1)

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

[5] Baker County's comprehensive plan and land use regulations were acknowledged by the Commission for compliance with Goal 3 on May 16, 1986.

[6] 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).

appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.

No information has been presented in the claim to establish that the claimant's desired division of tax lot 200 complies with the standards under Goal 3 and ORS 215.263 (1973 edition). However, as explained in Section V.(1), when the claimant acquired tax lot 100, it was also subject to a restrictive covenant that prohibited the claimant from dividing that tax lot.

**Conclusions**

The current zoning requirements and minimum lot size established by Goal 3, ORS 215 and OAR 660, division 33, do not allow the claimant's desired division of the subject property. However, the claim does not establish whether or the extent to which the claimant's desired use of tax lot 200 complies with the standards for land divisions under the requirements of Goal 3 and ORS 215 in effect when the claimant acquired tax lot 200 on December 15, 1976.

Furthermore, when the claimant acquired tax lot 100, it was subject to a restrictive covenant that prohibited the claimant's division of that tax lot. Therefore, the claim does not establish that state laws enforced by the Commission or the department restrict the claimant's desired use of tax lot 100 relative to the uses permitted when he acquired tax lot 100 in 1977.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimant has identified. There may be other laws that currently apply to the claimant's use of tax lot 200, and that may continue to apply to the claimant's use of that tax lot, 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, it may become evident that other state laws apply to that use.

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

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

**Findings of Fact**

The claim includes an estimate of $300,000 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 value of the subject property.

**Conclusions**

As explained in Section V.(1) of this report, the claimant is Larry Riepma who acquired tax lot 200 on December 15, 1976, and tax lot 100 on December 29, 1977. As explained in Section V.(1) of this report, when the claimant acquired tax lot 100, it was subject to a restrictive covenant that prohibited the division of that tax lot. Therefore, land use regulations enforced by

the Commission or the department since the claimant acquired tax lot 100 in 1977 do not have the effect of reducing its fair market value relative to uses allowed when the claimant acquired it.

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 subject property is a reduction of $300,000.

Without an appraisal or other documentation and without verification of 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, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of tax lot 200. 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 Baker County has implemented through its current EFU zone. With the exception of provisions of Goal 3 and ORS 215 in effect when the claimant acquired tax lot 200 on December 15, 1976, these land use regulations were enacted or adopted after the claimant acquired the property. As explained in Section V.(2) of this report, the claimant's desired use of tax lot 100 was prohibited by a restrictive covenant when he acquired it.

**Conclusions**

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that with the exception of provisions of Goal 3 and ORS 215 in effect in 1976 and 1977, the statutory, goal and rule restrictions on division and development of the claimant's property were not in effect when the claimant acquired it, and therefore, these laws are not exempt under ORS 197.352(3)(E). However, as discussed in Section V.(2) of this report, the claimant's desired use of tax lot 100 is subject to a restrictive covenant that prohibits his desired division of that tax lot.

Provisions of Goal 3 and ORS 215 in effect when the claimant acquired tax lot 200 are exempt under ORS 197.352(3)(E) and will continue to apply to that tax lot. Other laws in effect when the claimant acquired tax lot 200 are also exempt under ORS 197.352(3)(E) and will continue to

apply to the claimant's use of that tax lot. There may be other laws that continue to apply to the claimant's use of tax lot 200 that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

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

## VI. FORM OF RELIEF

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

### Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department do not restrict the claimant's desired use of tax lot 100 because that tax lot was subject to a restrictive covenant that prohibits the claimant's desired division of that tax lot. Therefore, the claimant has not established that any state laws enforced by the Commission or the department restrict his use of tax lot 100 with the effect of reducing its fair market value.

The department further finds that laws enforced by the Commission or the department 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 $300,000. 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 the subject property was allowed under the standards in effect when he acquired tax lot 200. 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 Larry Riepma to use tax lot 200 for a use permitted at the time he acquired that tax lot on December 15, 1976.

**Conclusions**

Based on the record before the department, the claimant, Larry Riepma, has not established that he is entitled to relief under ORS 197.352(1) as to tax lot 100 as a result of land use regulations enforced by the Commission nor the department because no state land use regulations restrict the claimant's desired use of tax lot 100 with the effect of reducing its fair market value. Therefore, the department recommends that this claim be denied as to tax lot 100.

The department further recommends that the claim be approved as to tax lot 200, 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 Larry Riepma's partition of tax lot 200 into parcels of at least two acres each: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after December 15, 1976. These land use regulations 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 it on December 15, 1976.

2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lot 200 for the use described in this report, subject to the standards in effect on December 15, 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 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 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 July 26, 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.