



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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July 18, 2007

To: Interested Persons  
From: Lane Shetterly, Director



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M130820*

*Claimant: Michael Jackson*

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

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

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

IN THE MATTER OF THE CLAIM FOR	)	FINAL ORDER
COMPENSATION UNDER ORS 197.352	)	CLAIM NO. M130820
(BALLOT MEASURE 37) OF	)	
Michael Jackson, CLAIMANT	)	

Claimant: Michael Jackson (the Claimant)

Property: Township 36S, Range 1W, Section 32C, Tax lots 100 and 300  
Jackson 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 300 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 100 as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Michael Jackson's division of tax lot 100 into one-acre parcels or to his development of a dwelling on each parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33. These laws will not apply to the claimant only to the extent necessary to allow him to use the tax lot 100 for the use described in this report, and only to the extent that use was permitted when he acquired the property on April 23, 1973.
2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lot 100 for the use described in this report, subject to the standards in effect on April 23, 1973.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lot 100 may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the

claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of tax lot 100 imposed by private parties.

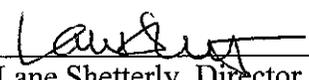
4. Any use of tax lot 100 by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, 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 100, 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 100 by the claimant.

6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

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 18<sup>th</sup> day of July, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
Janice K. Dean, SSD Administrator  
DAS, State Services Division  
Dated this 18<sup>th</sup> day of July, 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**

July 18, 2007

**STATE CLAIM NUMBER:** M130820

**NAME OF CLAIMANT:** Michael Jackson

**MAILING ADDRESS:** 106 Antelope Road  
White City, Oregon 97503

**PROPERTY IDENTIFICATION:** Township 36S, Range 1W, Section 32C  
Tax lots 100 and 300  
Jackson County

**OTHER CONTACT INFORMATION:** Mark S. Bartholomew  
717 Murphy Road  
Medford, Oregon 97504

**DATE RECEIVED BY DAS:** November 16, 2006

**DEADLINE FOR FINAL ACTION:<sup>1</sup>** May 9, 2008

**I. SUMMARY OF CLAIM**

The claimant, Michael Jackson, seeks compensation in the amount of \$4,199,110 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 50.19-acre subject property into one-acre parcels and to develop a dwelling on each parcel.<sup>2</sup> The subject property is located at 5300 Crater Lake Highway, near Medford, in Jackson 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

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<sup>1</sup> 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.

<sup>2</sup> The subject property includes two tax lots. Tax lot 100 consists of 40.33 acres, and tax lot 300 consists of 9.86 acres.

by the Land Conservation and Development Commission (the Commission) or the department not apply to Michael Jackson's division of tax lot 100 into one-acre parcels and to his development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660-004-0040 and 660, division 33. These laws will not apply to the claimant only to the extent necessary to allow him to use tax lot 100 for the use described in this report, and only to the extent that use was permitted when he acquired the property on April 23, 1973.

The department has further determined that the claim is not valid as to tax lot 300 because neither the Commission nor the department has enforced laws that restrict the claimant's use of that tax lot. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On June 4, 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 Goals 3, 4 (Forest Lands), 5 (Open Spaces), 11 (Public Facilities and Services) and 14; ORS 92, 195, 197 and 215; provisions of OAR 660, divisions 4, 11, 12, and 33; provisions of Jackson County zoning; and "wetlands regulations" 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, Michael Jackson, acquired tax lot 100 on April 23, 1973, and tax lot 300 on November 24, 1976, as reflected by a warranty deed and land sale contract included with the claim. The Jackson County Assessor’s Office confirms the claimant’s current ownership of the subject property.

### **Conclusions**

The claimant, Michael Jackson, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C). The claimant has been an owner of tax lot 100 since April 23, 1973, and of tax lot 300 since November 24, 1976.

### **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 50.19-acre subject property into one-acre parcels and to develop a dwelling on each parcel, and that current land use regulations prevent the desired use.<sup>3</sup>

Tax lot 300 is currently zoned C-H (Heavy Commercial) by Jackson County. The C-H district is a commercial zone. Tax lot 300 is within the City of Medford’s Urban Growth Boundary

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<sup>3</sup> 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. 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.

(UGB). In general, the zoning of a particular property within a UGB is determined by the city or county with land use jurisdiction over the property. In some circumstances, the Commission's rules or state statutes may apply to a local government decision regarding zoning, but usually, within a UGB, state laws require or encourage a higher intensity of development rather than restrict the use of real property. In this case, the claimant has not alleged how a specific state land use regulation restricts the use of real property and has the effect of reducing the fair market value of that real property. Based on the information in the claim, the department has not identified any state laws that restrict the claimant's use of tax lot 300.

The claim for tax lot 100 is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) and rural residential zoning and restrict uses on EFU- and rural residential-zoned land.

Approximately 35.33 acres of tax lot 100 is zoned EFU by Jackson County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3.<sup>4</sup> 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 and establish standards for development of dwellings on existing or proposed parcels on that 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.

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.<sup>5</sup>

Goal 14, which was also effective January 25, 1975, would likely apply to the claimant's desired division of the EFU-zoned portion of tax lot 100 into parcels less than two acres. Goal 14 generally requires that land outside of UGBs be used for rural uses.

An approximately five acres of tax lot 100 is zoned RR-5 by Jackson County. The RR-5 zone is consistent with Goal 14, which generally requires that land outside of UGBs be used for rural uses. Jackson County's RR-5 zone was adopted on June 29, 1973, and requires a minimum of five acres for the creation of a new lot or parcel.

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<sup>4</sup> An approximately 35.33-acre portion of tax lot 100 is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

<sup>5</sup> The Commission adopted amendments to OAR 660-033-0130 et seq. to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. These amendments clarified but did not further restrict the OAR 660, division 33, development standards.

Goal 14 requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and efficient transition from rural to urban land use. In 2000, as a result of a 1986 Oregon Supreme Court decision,<sup>6</sup> the Commission amended Goal 14 and adopted OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas), which was effective on October 4, 2000. For properties less than one mile from the UGB of the city or urban area of Ashland, Central Point, Medford, Sandy or Newberg, where that city or urban area does not have an urban reserve area acknowledged to comply with OAR 660, division 21, or is not part of an acknowledged regional growth plan (i.e., process prescribed for Regional Problem Solving in ORS 197.652 to 197.658), the rule states that the minimum area of any new lot or parcel shall be 10 acres (OAR 660-004-0040(8)(a), (b) and (c)). Some relief from this provision is available for lots or parcels having more than one permanent habitable dwelling pursuant to OAR 660-004-0040(8)(g). Because a portion of tax lot 100 is located less than one mile from the UGB of the City of Medford, new lots or parcels must be at least 10 acres.

The claimant acquired tax lot 100 on April 23, 1973, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33, were all enacted or adopted after the claimant acquired tax lot 100 in 1973 and do not allow the claimant's desired division or development of tax lot 100. These laws restrict the use of the subject property relative to the uses allowed when the claimant acquired tax lot 100.

The claim does not establish that any state laws currently restrict the claimant's desired use of tax lot 300. Because tax lot 300 is located within the City of Medford's UGB, neither the Commission nor the department enforces laws that require specific zoning of tax lot 300. Based on the record before the department, neither the Commission nor the department enforces any laws that restrict the claimant's desired use of tax lot 300.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimant has identified. There may be other laws that currently apply to the claimant's use of the subject property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

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

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

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<sup>6</sup> *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

### **Findings of Fact**

The claim includes an estimate of \$4,199,110 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 a market analysis included with the claim.

### **Conclusions**

As explained in Section V.(1) of this report, the claimant is Michael Jackson who acquired tax lot 100 on April 23, 1973, and tax lot 300 on November 24, 1976. The claimant has not established that any state land use regulations restrict the use of tax lot 300. Accordingly, no laws enforced by the Commission or the department have had the effect of reducing the fair market value of tax lot 300. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of tax lot 100 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 100 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 \$4,199,110.

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 tax lot 100 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 Goals 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33, which Jackson County has implemented through its current EFU and RR-5 zones. All of these land use regulations were enacted or adopted after the claimant acquired tax lot 100.

### **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 tax lot 100, 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 tax lot 100 in 1973. As a result, these laws are not exempt under ORS 197.352(3)(E).

As explained in Section V.(2) of this report, the claimant, Michael Jackson, has not established that any state land use regulations restrict his desired use of tax lot 300. Accordingly, the department cannot determine that any exemptions under ORS 197.352(3) apply to tax lot 300.

Laws in effect when the claimant acquired tax lot 100 are exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's use of that tax lot. In addition, Jackson County notes that a portion of tax lot 100 is located in a flood plain zone. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety. . . ." To the extent the county's flood plain regulations are based on state law, these regulations would be exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to the claimant's use of tax lot 100 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 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 tax lot 100 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 tax lot 100.

## **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 because the property is located within the City of Medford's UGB, and neither the Commission nor the department enforces laws that require specific zoning of that tax lot. The department further finds laws enforced by the Commission or the department restrict the claimant's desired use of tax lot 100. 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 \$4,199,110. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair

market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimant's desired use of tax lot 100 was allowed under the standards in effect when he acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of tax lot 100 to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Michael Jackson to use tax lot 100 for a use permitted at the time he acquired the property on April 23, 1973.

### **Conclusions**

Based on the record and foregoing findings and conclusions, the claimant, Michael Jackson, 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 no state land use regulations restrict the claimant's desired use of tax lot 300. Therefore, the department recommends that the claim be denied as to tax lot 300.

The department further recommends that the claim be approved as to tax lot 100, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Michael Jackson's division of tax lot 100 into one-acre parcels or to his development of a dwelling on each parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660-004-0040 and 660, division 33. These laws will not apply to the claimant only to the extent necessary to allow him to use the tax lot 100 for the use described in this report, and only to the extent that use was permitted when he acquired the property on April 23, 1973.
2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lot 100 for the use described in this report, subject to the standards in effect on April 23, 1973.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lot 100 may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of tax lot 100 imposed by private parties.
4. Any use of tax lot 100 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 100, 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 100 by the claimant.

6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

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

The department issued its draft staff report on this claim on June 20, 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.