Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2524
Phone: (503) 373-0050
First Floor/Coastal Fax: (503) 378-6033
Second Floor/Director's Office Fax: (503) 378-5518
Third Floor/Measure 37 Fax: (503) 378-5318
Web Address: http://www.oregon.gov/LCD

September 12, 2007

To: Interested Persons

From: Cora R. Parker, Acting Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130864

Claimant: Valerie Albright

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

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

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

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Dorothy Mignot, CLAIMANTS	))))	FINAL ORDER A CLAIM NO. M130864

Claimants: Dorothy Mignot (the Claimants)

Property: Township 35S, Range 6W, Section 15B, Tax lot 200
Josephine 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 Dorothy Mignot's division of the 110.01-acre subject property into fifty 2-acre parcels: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6. These land use regulations will not apply to Dorothy Mignot only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on October 20, 1972.

2. The action by the State of Oregon provides the state's authorization to Dorothy Mignot to use the subject property for the use described in this report, subject to the standards in effect on October 20, 1972.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Dorothy Mignot first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a

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

4. Any use of the subject property by Dorothy Mignot 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 Dorothy Mignot to use the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves Dorothy Mignot from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by her.

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 Manager for the Measure 37 Services Division 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 Manager of the Measure 37 Services Unit 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:
Cora R. Parker, Acting Director

Michael Morrissey, Manager
DLCD, Measure 37 Division
Dated this 12th day of September, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Carla Ploederer, Manager
DAS, Measure 37 Services Unit
Dated this 12th day of September, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.

2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

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

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Valerie Albright, CLAIMANT	))))	FINAL ORDER B CLAIM NO. M130864

Claimant: Valerie Albright (the Claimant)

Property: Township 35S, Range 6W, Section 15B, Tax lot 200
Josephine 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 Manager of 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 chapter 125, division 145, and by the Manager of the Measure 37 Services Unit 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:
Cora R. Parker, Acting Director

Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 12th day of September, 2007.

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

Carla Ploederer, Manager
DAS, Measure 37 Services Unit
Dated this 12th day of September, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to the following judicial remedies:

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)

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

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

September 12, 2007

STATE CLAIM NUMBER:	M130864
NAME OF CLAIMANTS:	Dorothy Mignot[1] Valerie Albright
MAILING ADDRESS:	305 NE 6th Street #1015 Grants Pass, Oregon 97526
PROPERTY IDENTIFICATION:	Township 35S, Range 6W, Section 15B Tax lot 200 Josephine County
OTHER CONTACT INFORMATION:	Tamara L. Gledhill, Attorney Brophy, Mills, Schmor, Gerking, Brophy and Pradis, LLP 201 West Main Street, Suite 5 Medford, Oregon 97501
DATE RECEIVED BY DAS:	November 17, 2006
DEADLINE FOR FINAL ACTION:[2]	May 10, 2008

I. SUMMARY OF CLAIM

The claimants, Dorothy Mignot and Valerie Albright, seek compensation in the amount of $3,360,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 110.01-acre subject property into fifty 2-acre parcels. The subject property is located southeast of Pleasant Valley Road, near Grants Pass, in Josephine County. (See claim.)

---

[1] Based on the information submitted with the claim, the department initially construed the claim to name Valerie Albright as the sole claimant. In response to the draft staff report, the claimants' attorney clarified her previous representations and explained her original intent that, in addition to naming Valerie Albright as an individual claimant, she intended to identify Ms. Albright as holding the power of attorney for Dorothy Mignot, who was also intended to be a claimant. The executed Power of Attorney was included with the original claim.

[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.

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary 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 Dorothy Mignot's division of the 110.01-acre subject property into fifty 2-acre parcels: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6. These laws will not apply to Dorothy Mignot only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on October 20, 1972.

The department has determined that the claim is not valid as to Valerie Albright because her desired use of the subject property was prohibited under the laws in effect when she acquired the property in 2004. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 21, 2007, pursuant to Oregon Administrative Rule (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, three written comments were received in response to the 15-day notice.

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

IV. TIMELINESS OF CLAIM

Requirement

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

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or

2. For claims arising from land use regulations enacted after the effective date of 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 17, 2006, for processing under OAR 125, division 145. The claim identifies provisions of ORS 197 and 215; provisions of OAR 660 division 6; and all Josephine County zoning ordinances as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for "owners" as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines "owner" as "the present owner of the property, or any interest therein."

Findings of Fact

Claimant Dorothy Mignot acquired the subject property on October 20, 1972, as reflected by a bargain and sale deed included with the claim. Claimant Valerie Albright acquired an interest in the subject property on June 16, 2004, as successor trustee of the Mignot Trust (Dorothy Mignot Revocable Marital Trust), as reflected by a certification of trust included with the claim.[3] The Josephine County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Dorothy Mignot and Valerie Albright, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C). Dorothy Mignot has been an owners since October 20, 1972. Valerie Albright has been an owner since June 16, 2004.[4]

---

[3] Ernest W. and Dorothy P. Mignot acquired the property in 1972, and transferred it to the Mignot Trust on April 20, 1992, with themselves as trustees, as reflected by deeds included with the claim. The claimant was appointed conservator/CPA for Dorothy Mignot on May 6, 2006. However, the claim does not indicate that Dorothy Mignot is a family member of the claimant.

[4] Claimant Valerie Albright has not asserted that she acquired the property from a family member or provided documentation to establish a family relationship. Absent evidence to establish that she acquired the property from a family member, the department cannot evaluate the claim for compensation based on family ownership as to Valerie Albright.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants' use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the 110.01-acre subject property into fifty 2-acre parcels, and that the property's current zoning prevents the desired use.[5]

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimants' property is zoned Forest Commercial (FC) by Josephine County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimants' property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use.

Current land use regulations, including ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, generally prohibit the division of forest-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 generally establishes an 80-acre minimum size for the creation of new lots or parcels on forest-zoned land and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.705 to 215.755 establish standards for the creation of new parcels and dwellings allowed in forest zones.

OAR 660, division 6, became effective on September 1, 1982, to implement Goal 4 and establish standards for divisions and development of land zoned for forest use, and was amended on March 1, 1994, to implement ORS 215.705 to 215.755 and 215.780. OAR 660-006-0025 interprets the goal and statutory standard for uses allowed in forest zones. OAR 660-006-0026 interprets land division requirements in forest zones.

Claimant Dorothy Mignot acquired the subject property on October 20, 1972, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

Claimant Valerie Albright acquired the subject property on June 16, 2004. At that time, the subject property was subject to the current laws in effect, as described above.

---

[5] 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 her desired use.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 ORS 215 and OAR 660, division 6, for forest-zoned land were all enacted or adopted after Dorothy Albright acquired the subject property in 1972 and do not allow her desired division or development of the property. These laws restrict the use of the property relative to the uses allowed when Dorothy Albright acquired the property. Laws enacted or adopted since the Valerie Albright acquired the subject property in 2004 do not restrict her desired use of the property relative to when she acquired it in 2004.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property, based on the uses that the claimants have identified. There may be other laws that currently apply to Dorothy Mignot's use of the subject property, and that may continue to apply to her use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When Dorothy Mignot 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 $3,360,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on a realtor's assessment of the value of the subject property included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are Dorothy Mignot who acquired the subject property on October 20, 1972, and Valerie Albright who acquired the subject property on June 16, 2004. No state laws enacted or adopted since Valerie Albright acquired the subject property restrict the use of the property relative to the uses allowed in 2004. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Commission or the department, as to Valerie Albright. Under ORS 197.352, Dorothy Mignot is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since Dorothy Mignot acquired the subject property restrict her desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of $3,360,000.

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 the applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, which Josephine County has implemented through its current FC zone. All of these land use regulations were enacted or adopted after Dorothy Mignot acquired the subject property. As set forth in Section V.(2) of this report, all of the state land use regulations that restrict Valerie Albright's desired use of the subject property were in effect when she acquired the property in 2004.

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 residential division and development of the subject property were in effect when Dorothy Mignot acquired the property in 1972. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when Dorothy Mignot acquired the subject property are exempt under ORS 197.352(3)(E) and will also continue to apply to her use of the property. In addition, the department notes that ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-0027, -0029 and -0035, include fire protection standards for dwellings and structures in forest zones. ORS 197.352 (3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . ." Accordingly, the siting standards for dwellings and structures in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to Dorothy Mignot'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 the subject property until there is a specific proposal for that use. When Dorothy Mignot 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).

All of the state land use regulations that restrict Valerie Albright's desired use of the subject property were in effect when she acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when Valerie Albright acquired the subject property.

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

should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to Dorothy Mignot's 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 Valerie Albright's desired use of the subject property relative to what was permitted when she acquired it in 2004 and do not reduce the fair market value of the property. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E), as to Valerie Albright. The department further finds laws enforced by the Commission or the department restrict Dorothy Mignot's desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by $3,360,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which Dorothy Mignot's desired use of the subject property was allowed under the standards in effect when she acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Dorothy Mignot to use the subject property for a use permitted at the time she acquired the property on October 20, 1972.

Conclusions

Based on the record and the foregoing findings and conclusions, Valerie Albright has not established that she are 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 her desired use of the property relative to uses permitted when she acquired it, with the effect of reducing the property's fair market value. Therefore, the department recommends that this claim be denied as to Valerie Albright.

The department otherwise recommends that the claim be approved as to Dorothy Mignot, 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 Dorothy Mignot's division of the 110.01-acre subject property into fifty 2-acre parcels: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6. These land use regulations will not apply to Dorothy Mignot only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on October 20, 1972.

2. The action by the State of Oregon provides the state's authorization to Dorothy Mignot to use the subject property for the use described in this report, subject to the standards in effect on October 20, 1972.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Dorothy Mignot first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by Dorothy Mignot 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 Dorothy Mignot to use the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves Dorothy Mignot from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by her.

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 July 11, 2007. OAR 125-145 0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation.