

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
Draft Staff Report and Recommendation**

March 28, 2006

**STATE CLAIM NUMBER:** M118603  
Report A<sup>1</sup>

**NAMES OF CLAIMANTS** John McKay  
Thomas Orth (Report B)

**MAILING ADDRESS:** 42 Copperleaf Drive  
The Woodlands, TX 77381

**PROPERTY IDENTIFICATION:** Township 7S, Range 11W, Section 1  
Tax lot 100  
Lincoln County

**OTHER INTEREST IN PROPERTY:** Dolores J. Orth, (Orth Marital Trust)  
PO Box 2247  
Gresham, OR 97030

**OTHER CONTACT INFORMATION** Dennis L. Bartoldus  
PO Box 1510  
Newport, OR 97365

**DATE RECEIVED BY DAS:** June 14, 2005

**180-DAY DEADLINE:** April 29, 2006<sup>2</sup>

**I. SUMMARY OF CLAIM**

The claimant, John McKay, seeks compensation in the amount of \$3,712,500 for the reduction in fair market value as a result of certain 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 79.37-acre property into 31 to 35 two to three-acre parcels for residential development. The subject property is located off Devils Lake Road and 50th Street, near Lincoln City, in Lincoln County. (See claim.)

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<sup>1</sup> This claim was filed jointly by John McKay and Thomas Orth. Mr. Orth's claim is addressed separately in the department's companion Measure 37 staff report M118603 Report B.

<sup>2</sup> This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

## 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 not valid because the claimant's desired use of the subject property was prohibited under the laws in effect when the claimant acquired the property in 2004. (See the complete recommendation in Section VI. of this report.)

## III. COMMENTS ON THE CLAIM

### Comments Received

On July 20, 2005, pursuant to Oregon Administrative Rules (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, five written comments, evidence or information were received in response to the 10-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 June 14, 2005, for processing under OAR 125, division 145. The claim identifies Lincoln County's zoning and land development ordinance and Statewide Planning Goal 4 (Forest Lands) 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, John McKay, acquired the subject property on October 11, 2004, as reflected by title report included with the claim. The Lincoln County Assessor’s Office confirms that the claimant is a current owner of the subject property.<sup>3</sup>

## **Conclusions**

The claimant, John McKay, is an “owner” of the subject property, as that term is defined by ORS 197.352(11)(C), as of October 11, 2004.

### **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 subject property into 31 to 35 two to three-acre parcels for residential homesites.

The claim is based on Lincoln County’s current TC (Timber Conservation) zone and the applicable provisions of state law that require such zoning. The claimant’s property is zoned TC, as required by Goal 4 in accordance with ORS 215 and OAR 660, division 6, because the claimant’s property is “forest land” as defined by Goal 4. Goal 4 became effective on January 25, 1975, and required that forest lands as defined by the Goal be zoned forest pursuant to ORS 215. The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on

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<sup>3</sup> The property is owned jointly by John McKay and Thomas Orth, trustee for the Orth Marital Trust. The claim for the subject property was submitted by Thomas Orth and John McKay as co-claimants. Report B addresses the interests of Mr. Orth and the Orth Marital Trust.

November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

The claimant acquired the subject property on October 11, 2004, after each of the laws was in effect.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 and provisions applicable to land zoned forest in ORS 215 and OAR 660, division 6, were all enacted or adopted before John McKay acquired the subject property on October 11, 2004. These land use regulations do not allow the creation of new parcels and establishment of dwellings on the subject property. Laws enacted or adopted since the claimant acquired the subject property in 2004 do not restrict the claimant's desired use of the property relative to when the claimant acquired it in 2004.

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

In order to establish a valid claim, ORS 197.352(1) requires that any land use regulation 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 \$3,712,500 as the reduction in the subject property's fair market value due to current regulations. This amount is based on an appraisal submitted with the claim.

### **Conclusions**

As explained in Section V.(1) of this report, John McKay is the claimant. He acquired the subject property on October 11, 2004. No state laws enacted or adopted since the claimant 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.

### **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 does not identify any state land use regulations enacted or adopted since the claimant acquired the subject property that restrict the use of the property relative to what would have been allowed when he acquired it on October 11, 2004. As set forth in Section V.(2) of this report, the state land use regulations restricting the claimant's desired use of the subject property were in effect when the claimant acquired the property in 2004.

### **Conclusions**

All of the state land use regulations that restrict the claimant's desired use of the subject property were in effect when the claimant acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant acquired 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 current 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 the subject property relative to what was permitted when the claimant 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).

### **Conclusions**

Based on the record and the foregoing findings and conclusions, the claimant 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. Therefore, this claim is denied.

## **VII. NOTICE OF OPPORTUNITY TO COMMENT**

This staff report is not a final decision by the department and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides 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. Such response must be filed no more than ten calendar days after the date this report is mailed to the claimant and any third parties. Responses to this

draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses must be delivered to the Oregon Department of Administrative Services (DAS), Measure 37 Unit, Risk Management–State Services Division, 1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 and will be deemed timely filed if either postmarked on the tenth day, or actually delivered to DAS by the close of business on the tenth day. Note: Please reference the claim number, claimant name and clearly mark your comments as “Draft Staff Report comments.” Comments must be submitted in writing only. Those comments submitted electronically or by facsimile will not be accepted.

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
Draft Staff Report and Recommendation**

March 28, 2006

**STATE CLAIM NUMBER:** M118603  
Report B<sup>1</sup>

**NAMES OF CLAIMANTS:** Thomas Orth  
Trustee, Orth Marital Trust  
John McKay (Report A)

**MAILING ADDRESS:** Thomas Orth (Orth Marital Trust)  
PO Box 2247  
Gresham, OR 97030

John McKay  
42 Copperleaf Drive  
The Woodlands, TX 77381

**PROPERTY IDENTIFICATION:** Township 7S, Range 11W, Section 1  
Tax lot 100  
Lincoln County

**OTHER INTEREST IN PROPERTY:** Dolores J. Orth (Orth Marital Trust)  
PO Box 2247  
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**OTHER CONTACT INFORMATION:** Dennis L. Bartoldus  
PO Box 1510  
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<sup>1</sup> This claim was filed jointly by Thomas Orth and John McKay. Mr. McKay's claim is addressed separately in the department's companion Measure 37 staff report M118603 Report A.

<sup>2</sup> This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

## **I. SUMMARY OF CLAIM**

The claimant, Thomas Orth, seeks compensation in the amount of \$3,712,500 for the reduction in fair market value as a result of certain 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 79.37-acre property into 31 to 35 two to three-acre parcels and to develop a dwelling on each parcel. The subject property is located off Devils Lake Road and 50th Street, near Lincoln City, in Lincoln County. (See claim.)

## **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. 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 Thomas Orth's division of the 79.37-acre property into 31 to 35 two to three-acre parcels and to his development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6, enacted or adopted after August 28, 1989. These laws will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property in 1989. The department acknowledges that the relief to which Thomas Orth is entitled under ORS 197.352 will not allow him to use the subject property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

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

### **Comments Received**

On July 20, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding property. According to DAS, five written comments, evidence or information were received in response to the 10-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), 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 June 14, 2005, for processing under OAR 125, division 145. The claim identifies Lincoln County's Timber Conservation (TC) 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, Thomas Orth, acquired the subject property on August 28, 1989, as reflected by a title report included with the claim. He transferred the property to the Orth Marital Trust at that time.<sup>3</sup> Thomas Orth is the trustee of the Orth Marital Trust.

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<sup>3</sup> Dennis L. Bartoldus, acting as the representative for Thomas Orth, submitted a request to amend the claim to add Dolores J. Orth as a claimant on August 4, 2005. The department informed Mr. Bartoldus that the state had already sent out notifications and initiated the review process, and that he could not amend the claim.

The Lincoln County Assessor's Office confirms that the claimant is a current owner of the subject property.<sup>4</sup> Documents included with the claim show that Clifford and Dolores Orth, family members of Thomas Orth, acquired the property in 1967.

### **Conclusions**

The claimant, Thomas Orth, is an "owner" of the subject property, as that term is defined by ORS 197.352(11)(C), as of August 28, 1989. Clifford and Dolores Orth are "family members" of the claimant as that term is defined by ORS 197.352(11)(A) and acquired the property in 1967.

### **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**

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 subject property into 31 to 35 two to three-acre parcels for residential homesites.

The claim is based generally on Lincoln County's current TC zone and the applicable provisions of state law that require such zoning. The claimant's property is zoned forest, as required by Goal 4 in accordance with ORS 215 and OAR 660, division 6, because the claimant's 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 (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

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<sup>4</sup> The property is owned jointly by John McKay and Thomas Orth, trustee for the Orth Marital Trust. The claim for the subject property was submitted by Thomas Orth and John McKay as co-claimants. Report A addresses the interests of Mr. McKay.

The claimant's family acquired the subject property in 1967, 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 Goal 4 and provisions applicable to land zoned for forest use in ORS 215 and OAR 660, division 6, were all enacted or adopted after the claimant's family acquired the subject property in 1967 and do not allow the desired division or development of the property. These laws restrict the use of the property relative to the uses allowed when the claimant's family acquired the property.

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

In order to establish a valid claim, ORS 197.352(1) requires that any land use regulation 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 \$3,712,500 as the reduction in the subject property's fair market value due to current regulations. This amount is based on an appraisal submitted with the claim.

As explained in Section V.(1) of this report, the claimant is Thomas Orth (trustee) whose family acquired the subject property in 1967. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant's family acquired the subject property restrict the desired division and development of the property. The claimant estimates the reduction in value due to the restrictions to be \$3,712,500.

Without further investigation and documentation, is not possible to substantiate the specific dollar amount the claimant demands for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

### **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 4, ORS 215 and OAR 660, division 6, which Lincoln County has implemented through its current TC zone. All of these land use regulations were enacted or adopted after the claimant's family acquired the subject property.

## **Conclusions**

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that 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 the claimant's family acquired the property in 1967. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimant's family acquired the subject property are exempt under ORS 197.352(3)(E), and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt, and would not provide a basis for compensation.

## **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 current 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 restrict the claimant's ability to divide the 79.37-acre property into 31 to 35 two to three-acre parcels and to develop a dwelling on each parcel. The claim asserts that the laws enforced by the Commission or the department reduce the fair market value of the subject property by \$3,712,500. However, because the claim does not provide specific documentation establishing how the specified restrictions reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely 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 Thomas Orth to use the subject property for a use permitted at the time he acquired the property on August 28, 1989.

On August 28, 1989, the property was subject to Lincoln County's TC zone, which was acknowledged by the Commission for compliance with Goal 4 on December 10, 1982. At that time, the TC zone had an 80-acre minimum lot size requirement for a parcel with a dwelling, and permitted dwellings as conditional uses on parcels of 40 acres. When the claimant acquired the subject property, the desired division and development of the property would have been governed by the county's TC zone and the applicable provisions of ORS 215 and OAR 660, division 6, then in effect.

In addition to the applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, in effect on August 28, 1989, and other laws in effect when the claimant acquired the subject property, there may be other laws that 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 and, depending on when they were enacted or adopted, may continue to apply to the claimant's property. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D), and will continue to apply to the subject property on that basis.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the 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 his 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.

### **Conclusions**

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Thomas Orth's division of the 79.37-acre property into 31 to 35 two to three-acre parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after August 28, 1989. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on August 28, 1989. The department acknowledges that the relief to which Thomas Orth is entitled under ORS 197.352 will not allow him to use the subject property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on August 28, 1989. On that date, the property was subject to compliance with Lincoln County's acknowledged TC zone, Goal 4, ORS 215 and OAR 660, division 6, then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property 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 the subject property, 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 the subject property by the claimant.

## **VII. NOTICE OF OPPORTUNITY TO COMMENT**

This staff report is not a final decision by the department and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides 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. Such response must be filed no more than ten calendar days after the date this report is mailed to the claimant and any third parties. Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses must be delivered to the Oregon Department of Administrative Services (DAS), Measure 37 Unit, Risk Management–State Services Division, 1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 and will be deemed timely filed if either postmarked on the tenth day, or actually delivered to DAS by the close of business on the tenth day. Note: Please reference the claim number, claimant name and clearly mark your comments as "Draft Staff Report comments." Comments must be submitted in writing only. Those comments submitted electronically or by facsimile will not be accepted.