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 Ray Mitchell and Dorothy Mitchell, CLAIMANTS	))))	FINAL ORDER CLAIM NOs. M 118393, M118394 and M118395

Claimants: Ray Mitchell and Dorothy Mitchell (the Claimants)

Properties: Township 38, Range 2E, Section 26, Tax Lots 100, 900, 1000; Section 27, Tax Lot 802; Section 34, Tax lots 100 and 101, Jackson County (M118393)

Township 38, Range 2E, Section 26, Tax lots 102, 103, 105, 106, 100, 1100 and 1104; Section 27, Tax lot 800; Section 34, Tax lots 300, 301 and 400, Jackson County (M118394)

Township 38, Range 2E, Section 26 Tax Lot 104
Jackson County (M118395)

Claim: The demand for compensation and any supporting information received from the Claimants 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 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 the claimants' division of 187 acres of the 711-acre property into 70 parcels, or to their development of a residential home site on each parcel created: applicable provisions of Statewide Planning Goals 3 and 14, ORS 215, and OAR 660 divisions 4 and 33. These land use regulations will not apply to the claimants' use of tax lot 104, to Ray Mitchell's use of the tax lots depicted in Table 1 and to Dorothy Mitchell's use of the tax lots depicted on Table 2, only to the extent necessary to allow the claimants to each use their individual and jointly owned tax lots for the use described in this report, as permitted at the time they acquired the property on December 4, 1961.

2. The action by the State of Oregon provides the state's authorization to Ray Mitchell to use the tax lots depicted in Table 1, to Dorothy Mitchell to use the tax lots depicted on Table 2, and the claimants to use tax lot 104 for the use described in this report, subject to the standards in effect on December 14, 1961.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 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 claimants first obtain 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 ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

4. Any use of the property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in Condition 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 claimants to use the 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 claimants 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 property by the claimants.

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 13th day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 13th day of March, 2006.

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 293.316: Judicial review under ORS 293.316 may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review under ORS 293.316 is pursuant to the provisions of ORS 183.482 to the Court of Appeals.

2. 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 and the Circuit Court in the county in which you reside.

3. A cause of action under ORS 197.352: A present owner of the property, or any interest therein, may file a cause of action in the Circuit Court for the county where the property is located, if a land use regulation continues to apply to the subject property more than 180 days after the present owner made a written demand for compensation.

(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."

BALLOT MEASURE 37 (ORS 197.352)
CLAIM FOR COMPENSATION

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

March 13, 2006

STATE CLAIM NUMBERS:	M118393, M118394, and M118395
NAME OF CLAIMANTS:	Ray Mitchell and Dorothy Mitchell
MAILING ADDRESS:	8000 Dead Indian Memorial Road Ashland, Oregon 97020
PROPERTY IDENTIFICATION:	Township 38, Range 2E, Section 26, Tax lots 100, 900, 1000; Section 27, Tax lot 802; Section 34, Tax lots 100 and 101 Jackson County (M118393) Township 38, Range 2E, Section 26, Tax lots 102, 103, 105, 106, 100, 1100 and 1104; Section 27, Tax lot 800; Section 34, Tax lots 300 301, and 400 Jackson County (M118394) Township 38, Range 2E, Section 26 Tax Lot 104 Jackson County (M118395)
DATE RECEIVED BY DAS:	May 5, 2005
180-DAY DEADLINE:	March 20, 2006[1]

I. SUMMARY OF CLAIMS

The claimants, Ray and Dorothy Mitchell, seek compensation in the amount of $9,004,312 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 claimants desire compensation or the right to divide approximately 187 acres of their 711-acre property into 70 parcels, ranging in size from

[1] This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Measure 37 was suspended during the pendency of the appeal of Macpherson v. Dep't of Admin. Servs., 340 Or __, 2006 Ore. LEXIS 104 (February 21, 2006)

1.1 acres to 7.0 acres, with an average size of 2.7 acres, and to create "legal, buildable transferable home sites" for each parcel.[2] The claimants intend to hold the remaining 511 acres of their property in common ownership as open space. The entire 711-acre property is located at 8000 Dead Indian Memorial Road, in Jackson County. (See claims.)

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 claims are 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 the claimants division of 187 acres of the subject property into 70 parcels and to their development of a residential home site on each of the 70 parcels: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization), ORS 215 and OAR 660 divisions 4 and 33. These laws will not apply to the claimants only to the extent necessary to allow the claimants to use the portion of the 711-acre property owned by each of them individually or jointly for the use described in this report, as permitted at the time they acquired the property, in 1961. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIMS

Comments Received

On March 2, 2005, 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, six written comments, evidence or information were received in response to the 10-day notice.[3]

The comments do not address whether the claims meet the criteria for relief (compensation or waiver) under ORS 197.352. Comments concerning the effects a use of the property may have on surrounding areas generally are 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 waiving a state law. (See comment letters in the department's claim file.)

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[2] Measure 37 authorizes a state agency to not apply a law to allow the owner a use of the property permitted at the time the owner acquired the property. The Oregon Department of Justice has advised the department that "[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost." This report therefore addresses whether claimant could divide and develop the property. It cannot and does not create a transferable waiver.

[3] The 10-day notice period was suspended for 139 days during the pendency of the Macpherson v. Dep't of Admin. Servs., 340 Or ___, 2006 Ore. LEXIS 104 (February 21, 2006), which suspended all Measure 37 deadlines.

IV. TIMELINESS OF CLAIMS

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

These claims were submitted to DAS on May 5, 2005, for processing under OAR 125, division 145. The claimants identify numerous land use regulations enacted or adopted since the claimants' acquisition of the property in 1961 as the basis for these claims. Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37, are the basis for these claims. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

Conclusions

The claims have been submitted within two years of December 2, 2004, the effective date of Measure 37, based on land use regulations adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIMS

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

Table 1. Property currently owned by Ray Mitchell, individually

Tax lot	Acreage	Date of Acquisition, Ray Mitchell	Date of Acquisition, Ray Mitchell Trust	Zoning Then/Now
T38, R2E, S26, 100	473.99	Dec 4, 1961	March 13, 1996	None/EFU
900	10.03	Dec. 4, 1961	March 13, 1996	None/RR-00
1000	23.13	Dec. 4, 1961	March 13, 1996	None/EFU
S27, 802	5.03	Dec. 4, 1961	March 13, 1996	None/RR-00
S34, 100	61.60	Dec. 4, 1961	March 13, 1996	None/EFU
101	1.42	Dec. 4, 1961	March 13, 1996	None/EFU

Table 2. Property currently owned by Dorothy Mitchell, individually

Tax lot	Acreage	Date of Acquisition, Dorothy Mitchell	Date of Acquisition, D. Mitchell Trust	Zoning Then/Now
T38, R2E, S26, 102	12.07	Dec. 4, 1961	March 13, 1996	None/EFU
103	5.65	Dec. 4, 1961	March 13, 1996	None/RR-00
105	1.00	Dec. 4, 1961	March 13, 1996	None/RR-00
106	1.82	Dec. 4, 1961	March 13, 1996	None/EFU
1100	6.17	Dec. 4, 1961	November 1, 1996	None/RR-00
1104	1.01	Dec. 4, 1961	November 1, 1996	None/RR-00
S27, 800	76.49	Dec. 4, 1961	March 13, 1996	None/EFU
S34, 300	17.08	Dec. 4, 1961	March 13, 1996	None/EFU
301	2.46	Dec. 4, 1961	March 13, 1996	None/EFU
400	2.27	Dec. 4, 1961	March 13, 1996	None/EFU

The claimants, Ray and Dorothy Mitchell, acquired the subject 711-acre property on December 4, 1961, as reflected by a Bargain and Sale Deed included with the claims. On March 13, 1996, the claimants transferred the tax lots listed in Table 1, above, totaling 572.2 acres, from Ray and Dorothy Mitchell to the Ray Mitchell Trust, a revocable living trust. On March 13, 1996, and November 1, 1996, the claimants transferred the tax lots listed in Table 2, above, totaling 136.02 acres, from Ray and Dorothy Mitchell to the Dorothy Mitchell Trust, a revocable living trust. These transfers are documented by Bargain and Sale Deeds included with the claims. Ray and Dorothy Mitchell retained joint ownership of tax lot 104. Documentation obtained from the Jackson County Assessor indicates that the Ray Mitchell Trust, Ray Mitchell, Trustee, is the current owner of the property listed in Table 1 that the Dorothy Mitchell Trust, Dorothy Mitchell, Trustee, is the owner of the property listed in Table 2, and that Ray and Dorothy Mitchell are the owners of tax lot 104. Acquisition by a revocable trust does not constitute a change in ownership under ORS 197.352(11)(C).

Conclusions

The claimants, Ray Mitchell and Dorothy Mitchell, are "owners" of the subject property, individually or jointly, as described above, as that term is defined by ORS 197.352(11)(C), as of December 4, 1961.

2. The Laws that are the Basis for these Claims

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 claims request "modification, removal, or non-application of all land use regulations enacted or applied since December 4, 1961, which would otherwise prevent the claimants from accomplishing [their] objective" to divide 187 acres of the total 711-acre property into 70 parcels ranging in size from 1.1 acres to 7.0 acres, with an average of 2.7 acres, for home sites. The claims list numerous state and local land use regulations as applicable to these claims, but does not establish how each of these regulations restricts the use of the property in a manner that reduces the fair market value of the property. Many of these regulations, on their face, do not appear to restrict the use of the subject property. Absent an explanation by the claimants as to how these regulations restrict the use of the property, this report addresses only those regulations that the department is relatively certain apply to and restrict the claimants' use of the property.

The claims are based, in part, on Jackson County's current Exclusive Farm Use (EFU) Zone and in part on Jackson County's current Rural Residential (RR-00) Zone, and the applicable provisions of state law that require such zoning, in accordance with the property's current zoning. As depicted on Tables 1 and 2 above, approximately 679 acres of the subject 711-acre property is zoned EFU and approximately 32 acres are zoned RR-00, including tax lot 104.

Approximately 679 acres of the subject property are zoned EFU as required by Goal 3, in accord with OAR 660 division 33 and ORS 215 because that portion of the claimants' property is "agricultural land" as defined by Goal 3.[4] Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284, 215.780 and OAR 660 division 33 as applied by Goal 3 do not allow the subject property to be divided into parcels less than 80 acres and establish standards for allowing the existing or any proposed parcels to have farm or non-farm dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2003 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

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[4] The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service (NRCS) Class I-IV soils.

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. Subsequent amendments to comply with HB 3326 (Chapter 704, Oregon Laws 2001, and effective January 1, 2002,) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

Approximately 32 acres of the property has been zoned Rural Residential (RR-00) since 1982. The RR-00 zone is a rural residential designation under the Jackson County Comprehensive Plan. The RR-00 zone provides for large parcels in areas where there are physical limitations in water, land resources or service availability, or for areas where rural residential divisions could inhibit future urban development. (Jackson County Land Development Ordinance, Chapter 5.3.) The subject rural residential parcels cannot be divided under the RR-00 zone.

The RR-00 zone is in accord with Statewide Planning Goal 14 (Urbanization), which also became effective on January 25, 1975, and required local comprehensive plans to provide for an orderly and efficient transition from rural to urban land use. The courts have found that Goal 14 generally prohibits residential development at urban densities on rural lands. Rural lands are lands outside of an urban growth boundary (UGB). As interpreted by the courts and the Commission, Goal 14 generally prohibits residential development outside of an urban growth boundary where lot or parcel sizes are less than 2 acres. (*See, e.g. 1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986); *DLCD v. Klamath County*, 38 Or LUBA 769 (2000).) As a result of the1986 *Curry County* Oregon Supreme Court decision, the Commission amended Goal 14 and adopted OAR 660-004-0040, establishing rules for rural residential development outside urban growth boundaries, which became effective on October 4, 2000. This rule prevents the subject property from being divided without an exception to Goal 14.

Conclusions

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goals 3 and 14, provisions applicable to land zoned EFU in ORS 215, OAR 660 division 33 and restrictions on rural residential zoning in OAR 660-004-0040 were all enacted after claimants acquired the subject property in 1961, and do not allow the division of the property, thereby restricting the use of the property relative to the uses allowed when the claimants acquired it.

This report addresses only those state laws that are identified in the claims, or that the department is certain apply to the property based on the use that the claimants have identified. There may be other laws that currently apply to the claimants' use of the property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claims. In some cases, it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimants seek 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 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 claims include an estimate of $9,004,312 as the reduction in fair market as a result of land use regulations enacted after the claimants acquired the property. This estimate is based on a market analysis of comparable properties. No formal appraisal has been provided with the claims.

Conclusions

As explained in Section V.(1) of this report, the current owners of the property are Ray and Dorothy Mitchell, who acquired the subject property on December 4, 1961, and who currently jointly own tax lot 104, and individually own the other tax lots that comprise the subject property as depicted in Tables 1 and 2. Under ORS 197.352, the claimants are 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, land use laws adopted since the claimants first acquired the property in 1961, restrict the use of the subject property.

Without a certified appraisal or other documentation, it is not possible to substantiate the specific dollar amount that the claimants demand for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that there has been some reduction in the fair market value of the subject property 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 claims are based on state land use regulations that restrict the use of the property relative to what would have been allowed in 1961, when the claimants acquired the property. These provisions include Statewide Planning Goals 3 and 14, ORS 215, OAR 660 division 4 and OAR 660 division 33. All of these state land use regulations were enacted or adopted after the claimants acquired the subject property and, and therefore, none of these laws is exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimants acquired the property.

Conclusions

It appears that the general statutory, goal and rule restrictions on dividing the subject property and developing it for residential purposes apply to the claimants' use of the property and that none of these laws were in effect before the claimants acquired the property in 1961. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimants acquired the property are exempt under ORS 197.352 (3)(E), and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to the claimants' use of the property that have not been identified in the claims. In some cases, it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimants seek 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 claims, or that the department is certain apply to the 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 claims. The claimant should be aware that the less information they have provided to the department in their claims, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the 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 a law that restricts 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 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 claimants' ability to divide 187 acres of the subject 711-acre property into 70 parcels, from 1.1 acres to 7.0 acres, and to development a residential home site for each parcel. The claims assert that the laws enforced by the Commission or department reduce the fair market value of the subject property by $9,004,312. Based on the record for this claim, the department acknowledges that the laws on which the claims are based likely have reduced the fair market value of the 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 the claimants to use the subject property for a use permitted at the time they acquired the property on December 4, 1961.

Conclusion

Based on the record, the department recommends that the claims 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 the claimants' division of 187 acres of the 711-acre property into 70 parcels, or to their development of a residential home site on each parcel created: applicable provisions of Statewide Planning Goals 3 and 14, ORS 215, and OAR 660 divisions 4 and 33. These land use regulations will not apply to the claimants' use of tax lot 104, to Ray Mitchell's use of the tax lots depicted in Table 1 and to Dorothy Mitchell's use of the tax lots depicted on Table 2, only to the extent necessary to allow the claimants to each use their individual and jointly owned tax lots for the use described in this report, as permitted at the time they acquired the property on December 4, 1961.

2. The action by the State of Oregon provides the state's authorization to Ray Mitchell to use the tax lots depicted in Table 1, to Dorothy Mitchell to use the tax lots depicted on Table 2, and the claimants to use tax lot 104 for the use described in this report, subject to the standards in effect on December 14, 1961.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 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 claimants first obtain 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 ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

4. Any use of the property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in Condition 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 claimants to use the 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 claimants 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 property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on October 11, 2005. 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. Comments received have been taken into account by the department in the issuance of this final report.