

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

MATTER OF THE CLAIM)
FOR COMPENSATION UNDER)
BALLOT MEASURE 37 (CHAPTER 1,)
OREGON LAWS 2005) OF)
Larry D. Guthrie and Helen E. Guthrie,)
CLAIMANTS)

FINAL ORDER
CLAIM NO. M118462

Claimants: Larry D. Guthrie and Helen E. Guthrie (the Claimants)

Property: Tax lot 700, Township 2S, Range 3E, Section 33, Clackamas 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 Ballot Measure 37 (2004) (Oregon Laws 2005, Chapter 1) (hereafter, Measure 37). 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 Larry D. Guthrie and Helen E. Guthrie's division of their property into one-acre lots and their development of those lots with single-family dwellings: applicable provisions of Statewide Planning Goals 3 and 14, ORS 215, and OAR 660, division 33 enacted after January 15, 1970 for that approximately 32.9 acres of the subject 34.9 property the claimants have owned continuously since January 15, 1970; and enacted after January 13, 2006 for that 2-acre portion of the property they acquired on that date. These land use regulations will not apply to Mr. and Ms. Guthrie's use of their property only to the extent necessary to allow them to use approximately 32.9 acres of the subject property for the use described in this report, to the extent that use was permitted at the time they acquired the property on January 15, 1970; and only to the extent necessary to allow them to use the 2-acre portion of the property they acquired on January 13, 2006 for a use permitted at the time they acquired that portion of the subject

property. The department acknowledges that as to the 2-acre portion of the property the claimants acquired on January 13, 2006, the relief to which the claimants are entitled under ORS 197.352 will not permit the claimants to use that portion of the property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimant to use approximately 32.9 acres of their property for the use described in this report, subject to the standards in effect when they acquired that property on January 15, 1970; and to use the 2-acre portion of the property they acquired on January 15, 2006, subject to the standards in effect on that date. On January 13, 1970, the property was subject to applicable provisions of Clackamas County's RA-1 zone then in effect. On January 15, 2006, the property was subject to the laws currently in effect, as described above in Section V. 2. of this report.

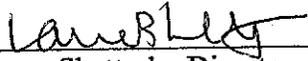
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first 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 (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).

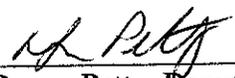
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the property, it may be necessary for them to obtain a decision under ORS 197.352, from Clackamas County or other jurisdiction that enforces land use regulations applicable to the property. Nothing 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 Measure 37, OAR 660-002-0010(8), and OAR 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under Measure 37, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:


Lane Shetterly, Director
DLCD
Dated this 31st day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:


Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 31st 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 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 197.352¹, 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)

¹ By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

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 31, 2006

STATE CLAIM NUMBER: M118462

NAMES OF CLAIMANTS: Larry D. Guthrie
Helen E. Guthrie

MAILING ADDRESS: 20480 South Criswell Road
Oregon City, Oregon 97045

PROPERTY IDENTIFICATION: Township 2S, Range 3E, Section 33
Tax lot 700
Clackamas County

OTHER CONTACT INFORMATION: Roger P. Mundorff, Attorney at Law
Mundorff and Kovac
11073 Southeast Main Street
Milwaukie, Oregon 97222

OTHER INTEREST IN PROPERTY: USA - Bonneville Power Administration¹
Benjamin Guzman and Melody Guzman²

DATE RECEIVED BY DAS: May 18, 2005

180-DAY DEADLINE: April 2, 2006³

I. SUMMARY OF CLAIM

The claimants, Larry D. Guthrie and Helen E. Guthrie, seek compensation in the amount of \$8,000,000⁴ for the reduction in fair market value as a result of certain land use regulations that

¹ Electric transmission line easement.

² Land sale contract for portion of property.

³ 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).

are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 34.9-acre property into one-acre lots and develop each lot with a single-family dwelling.⁵ The property is located at 20480 South Criswell Road, east of Oregon City, in Clackamas County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. 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 Mr. and Ms. Guthrie's division of the 34.9-acre subject property into one-acre lots and to their development of each lot with a single-family dwelling: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization), ORS 215, and OAR 660, division 33, enacted after the claimants acquired their current ownership interest in the subject property. These laws will not apply to the claimants only to the extent necessary to allow Larry D. Guthrie and Helen E. Guthrie to use the 32.9 acres of the 34.9-acre property that they have owned continuously since 1970 for the use described in this report, to the extent that use was permitted at the time they acquired that property in 1970; and only to the extent necessary to allow them to use the 2-acre portion of the property they acquired on January 13, 2006 for a use permitted at the time they acquired that portion of the subject property. The department acknowledges that as to the 2-acre portion of the property the claimants acquired on January 13, 2006, the relief to which the claimants are entitled under ORS 197.352 will not permit the claimants to use that portion of the 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 August 12, 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, one written comment was received in response to the 10-day notice. This comment does not address whether the claim meets the criteria for relief (compensation or waiver) under ORS 197.352 (Measure 37). Comments concerning the effects a use of the property may have

⁴ The section of The State Measure 37 claim form for information regarding reduction in value is not completed. However, the claimants' Measure 37 claim to Clackamas County states that the property's fair market value has been reduced by \$8,000,000 and a copy of the County claim is attached to the state claim form.

⁵ Claimants stated in their Measure 37 claim to Clackamas County: "We are requesting the subject property be divided into 80 one acre parcels," and they included a copy of their County claim with their state claim. According to the County's September 28, 2005, draft staff report, "The claimants are requesting compensation in the amount of \$8,000,000 for a reduction in fair market land value as a result of the enforcement of land use regulations or in the alternative, to divide the subject property into one-acre lots and build a single-family dwelling on each lot." (See copies of the County claim and staff report in the department's claim file.) (The implication that the property is 80 acres appears to be a mistake.)

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 the comment letter 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 the Measure (December 2, 2004), within two years of that effective date or the date the public entity applies the land use regulation as an approval criterion 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 the Measure (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 criterion, whichever is later.

Findings of Fact

This claim was submitted to DAS on May 18, 2005, for processing under OAR 125, division 145. The claim identifies ORS 215.263(1), 215.283(1)(f), 215.780(1)(a), and OAR 660-033-0100(1) and 660-033-0130(3)(a), as laws that restrict the use of the property as the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37, are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

Conclusions

The claim has 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 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 claimants, Larry D. Guthrie and Helen E. Guthrie, acquired the subject 34.9-acre property by deed on January 15, 1970. On October 22, 1999 they sold a 2-acre portion of the property to their son and daughter-in-law, Benjamin Guzman and Melody Guzman, through a land sale contract.⁶ The purchasers subsequently defaulted on their payments under the contract, and on January 13, 2006, the claimants re-acquired that 2-acre portion of the property through a Declaration of Forfeiture. Clackamas County Assessor records show Larry D. Guthrie and Helen E. Guthrie as current owners of the property.

Conclusions

The claimants, Larry D. Guthrie and Helen E. Guthrie, are “owners” of the subject property, as that term is defined by ORS 197.352(1)(C), as of January 15, 1970, except for the two acres the claimants sold in 1999. The claimants are owners of that portion of the property since as of January 13, 2006, the date they reacquired it. The entire property has been in family ownership since January 15, 1970.

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 lists ORS 215.263(1), 215.283(1)(f), 215.780(1)(a), and OAR 660-033-0100(1) and 660-033-0130(3)(a) as laws that regulate minimum lot size, land divisions, and dwellings allowed on the subject property.

The claim is based on Clackamas County’s current Exclusive Farm Use (EFU) zone and the applicable provisions of state law that require such zoning. The claimants’ property is zoned EFU as required by Goal 3, in accordance with OAR 660 division 33 and ORS 215 because the claimants’ property is “agricultural land” as defined by Goal 3.⁷ 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.

⁶ It appears, based on the information in the department’s file for this claim, that the 2-acre property subject to the contract was sold without being partitioned.

⁷ The claimants’ property is “agricultural land” because it contains NRCS (Natural Resources Conservation Service) Class II and IV Soils (*e.g.*, Bornstedt silt loam, 0-8% slopes, subclass IIe; and Delena silt loam, 3-12% slopes, subclass IVw). (See Soil Survey of Clackamas County Area, USDA Soil Conservation Service, November 1985, sheet #15 and pages 23, 47.)

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 smaller 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) established standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interpreted 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, 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.)

Statewide Planning Goal 14 would likely apply to division of the claimants' property into lots or parcels smaller than two acres in size. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses. Goal 14 became effective on January 25, 1975.

The claimants acquired the subject property on January 15, 1970, prior to the establishment of the statewide planning goals (effective January 25, 1975,) and implementing statutes and administrative rules. At that time, the property was zoned Rural (Agricultural) Single-Family Residential District (RA-1) by Clackamas County. The RA-1 zone in 1970 required a minimum lot size of 20,000 square feet if water and sanitary sewer were available, and a minimum of one acre if these services were not available.⁸ The record does not indicate which minimum lot size standard would have applied to claimants' property in 1970.

Conclusions

The zoning requirements and minimum lot size and dwelling standards established by Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization) and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33 were all enacted after Larry D. Guthrie and Helen E. Guthrie initially acquired the subject property in January 1970, and do not allow the division of the property, thereby restricting the use of the property relative to the uses allowed when the property was acquired. In January 1970, the property was subject to the requirements of Clackamas County's RA-1 zone then in effect.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses 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 claim. In some cases, it will not be possible to know what laws apply to a use of property until there is a specific

⁸ See September 28, 2005, County staff report to the Board of County Commissioners, copy in the department claim file.

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 claimants estimate \$8,000,000 as the reduction in the property’s fair market value due to current regulations.⁹ The basis for this estimate is: “One-acre lots sell for approximately \$100,000 per lot whereas this parcel was recently appraised at \$8,000,000, which includes the value of three separate residences in that price.” (See copy of the claimants’ County claim in the department’s claim file.) A 2003 appraisal submitted with claimants’ County Measure 37 claim estimated the property’s value as \$553,800. (See copy in the department’s claim file.) The Clackamas County Assessor estimates the current real market value of the property at \$955,021. (See electronic mail from Assessor’s Office to department staff in the department’s claim file.)

Conclusions

As explained in Section V.(1) of this report, the current owners are Larry D. Guthrie and Helen E. Guthrie, who initially acquired the property on January 15, 1970 . Under ORS 197.352, Larry D. Guthrie and Helen E. Guthrie 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), laws in effect since 1970 restrict the claimants’ ability to divide the property for residential use. The claim asserts the restrictions reduce the value of the property by \$8,000,000.

Based on the documentation submitted, it is not possible to substantiate the specific dollar amount 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.

⁹ Section 8 of the State Measure 37 claim form is blank. However, the claimants’ Measure 37 claim to Clackamas County states that the property’s fair market value has been reduced by \$8,000,000. A copy of the county claim is attached to the state claim form.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the property relative to what would have been allowed in 1970, when the Guthries initially acquired the property. None of these laws appear to be exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimants acquired the property.

Conclusions

Without a specific development proposal for the property, it is not possible for the department to determine what laws 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 does appear that the general statutory, goal and rule restrictions on residential development and use of farm land apply to the claimants' use of the property, and for the most part these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimants initially 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 claim. 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. And, in some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the 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 their claim, 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 the subject 34.9-acre property into one-acre lots and to develop each such lot with a single-family dwelling. The claim asserts that laws enforced by the Commission or department reduce the fair market value of the subject property by \$8,000,000. However, because the claim does not provide an appraisal or other specific documentation for how the specified restrictions reduce the fair market value of the 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 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 Mr. and Ms. Guthrie to use approximately 32.9 acres of the 34.9-acre subject property for a use permitted at the time they acquired that portion of the property on January 15, 1970; and to allow them to use the 2-acre portion of the property they acquired on January 13, 2006 for a use permitted at the time they acquired that portion of the property.

On January 13, 2006, when the claimants acquired 2 acres of the subject property, the property was subject to the current laws in effect, as described above in Section V. 2. of this report.

Conclusion

Based on the record, the department recommends that the claim be 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 Larry D. Guthrie and Helen E. Guthrie's division of their property into one-acre lots and their development of those lots with single-family dwellings: applicable provisions of Statewide Planning Goals 3 and 14, ORS 215, and OAR 660, division 33 enacted after January 15, 1970 for that approximately 32.9 acres of the subject 34.9 property the claimants have owned continuously since January 15, 1970; and enacted after January 13, 2006 for that 2-acre portion of the property they acquired on that date. These land use regulations will not apply to Mr. and Ms. Guthrie's use of their property only to the extent necessary to allow them to use approximately 32.9 acres of the subject property for the use described in this report, to the extent that use was permitted at the time they acquired the property on January 15, 1970; and only to the extent necessary to allow them to use the 2-acre portion of the property they acquired on January 13, 2006 for a use permitted at the time they acquired that portion of the subject property. The department acknowledges that as to the 2-acre portion of the property the claimants acquired on January 13, 2006, the relief to which the claimants are entitled under ORS 197.352 will not permit the claimants to use that portion of the property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimant to use approximately 32.9 acres of their property for the use described in this report, subject to the standards in effect when they acquired that property on January 15, 1970; and to use the 2-acre portion of the property they acquired on January 15, 2006, subject to the standards in effect on that date. On January 13, 1970, the property was subject to applicable provisions of Clackamas County's RA-1 zone then in effect. On January 15, 2006, the property was subject to the laws currently in effect, as described above in Section V. 2. of this report.

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 (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 them to obtain a decision under ORS 197.352, from Clackamas County or other jurisdiction 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 24, 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.