

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

IN THE MATTER OF THE CLAIM FOR) FINAL ORDER
COMPENSATION UNDER ORS 197.352) CLAIM NO. M118521
(BALLOT MEASURE 37) OF)
Brand S Corporation,)
Jack Brandis, president, CLAIMANT)

Claimant: Brand S Corporation, Jack Brandis, president (the Claimant)

Property: Tax lot 200, Township 11S, Range 5W, Section 17
Tax lot 108, Township 11S, Range 5W, Section 20
Benton County (the Property)

Claim: The demand for compensation and any supporting information received from the Claimants by the State of Oregon (the Claim).

Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Brand S Corporation's division of tax lot 200 into 74 two-acre lots or to its development of a dwelling on each newly created lot: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted after June 26, 1977. These land use regulations will not apply to the claimant only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the property on June 26, 1977.

2. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Brand S Corporation's division of tax lot 108 from the subject property or its development of a dwelling on the newly created parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted after July 19, 1988. These land use regulations will not apply to the claimant only to the extent necessary to allow it to use the subject property for

the use described in this report, and only to the extent that use was permitted when it acquired the property on July 19, 1988.

3. The action by the State of Oregon provides the state's authorization to the claimant to use tax lot 200 for the uses described in this report, subject to the standards in effect on June 29, 1977. On that date, the property was subject to compliance with Goal 4. The action by the State of Oregon also provides the state's authorization to the claimant to use tax lot 108 for the use described in this report, subject to the standards in effect on July, 19, 1988. On that date, the property was subject to compliance with Benton County's acknowledged forest zone and the applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, then in effect.

4. 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.

5. 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).

6. 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 it 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.

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 Deputy 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.

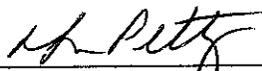
FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD

Dated this 6th day of April, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 6th day of April, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352¹, 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.

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.

(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**

April 6, 2006

STATE CLAIM NUMBER: M118521

NAME OF CLAIMANT: Brand S Corporation
Jack Brandis, president

MAILING ADDRESS: PO Box 1087
Corvallis, Oregon 97339

PROPERTY IDENTIFICATION: Township 11S, Range 5W, Section 17
Tax lot 200
Township 11S, Range 5W, Section 20
Tax lot 108
Benton County

OTHER CONTACT INFORMATION: George Heilig (agent submitting claim)
PO Box 546
Corvallis, Oregon 97339

DATE RECEIVED BY DAS: May 27, 2005

180-DAY DEADLINE: April 11, 2006¹

I. SUMMARY OF CLAIM

The claimant, Brand S Corporation, seeks compensation in the amount of \$6,934,600 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 226.3-acre property into 74 lots of two acres each and a 66-acre remnant lot and to develop a dwelling on each new lot. The subject property is located to the north of the westerly terminus of Ponderosa Boulevard, northwest of Corvallis. (See claim.)

¹ This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of 2005 Oregon Laws, Chapter 1 was suspended during the pendency of the appeal of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or ___, 2006 Ore. Lexis 104 (February 21, 2006).

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 Brand S Corporation's division of the 226.3-acre property into 74 two-acre parcels and one 66-acre parcel and to its development of a dwelling on each lot: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6, enacted after June 29, 1977, for 160-acre tax lot 200 and enacted after July 19, 1988, for 66.3-acre tax lot 108. These laws will not apply to the claimant only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the tax lots in 1977 and 1988. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On July 1, 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, two written comments, evidence or information were received in response to the 10-day notice.

The comments are relevant to whether a state law restricts the claimant's use of the subject property and whether the restriction of the claimant's use of the property reduces the fair market value of the property. The comments have been considered by the department in preparing this report.

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 2005 Oregon Laws, Chapter 1 (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 2005 Oregon Laws, Chapter 1 (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 27, 2005, for processing under OAR 125, division 145. The claim indirectly identifies Goal 4 as law that restricts the use of the subject property and as the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of 2005 Oregon Laws, Chapter 1, are the basis for this claim.

Conclusions

The claim has been submitted within two years of December 2, 2004, the effective date of 2005 Oregon Laws, Chapter 1, based on land use regulations enacted 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 the 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 claim involves two tax lots: tax lot 200 and tax lot 108. The claimant, Brand S Corporation, acquired tax lot 200 on June 29, 1977, as reflected by a warranty deed included with the claim. The claimant acquired tax lot 108 on July 19, 1988, also as reflected by a warranty deed included with the claim. Brand S Corporation is an active corporation registered with the Oregon Secretary of State.

A copy of a title report dated February 28, 2005, indicates that Brand S Corporation is the current owner of both tax lots.

Conclusions

The claimant, Brand S Corporation, is an “owner” of the subject property, as that term is defined by ORS 197.352(11)(C), as of June 29, 1977, for tax lot 200, and as of July 19, 1988, for tax lot 108.

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 demands compensation or “modification, removal or non-application of all land use regulations that restrict establishment of one single-family dwelling and accessory uses of [tax lot 108].” The claim also states that tax lot 200 “was zoned Urban Residential–2 acre minimum lot size (RU-2) by Benton County in 1977,” and demands compensation or the waiver of the current land use regulations that restrict the proposed division and development of tax lot 200.

The claim is based generally on Benton County’s current FC zone and the applicable provisions of state law that require such zoning. The claimant’s property is zoned FC 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.

The claimant acquired the subject property after the adoption of the statewide planning goals. The claimant acquired tax lot 200 before the Commission acknowledged Benton County’s land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged the county’s plan and land use regulations when the claimant acquired tax lot 200 on June 29, 1977, the statewide planning goals, and Goal 4 in particular, applied directly to the claimant’s property when it acquired the property.²

Goal 4 went into effect on January 25, 1975, “to conserve forest lands for forest uses” and required, “Lands suitable for forest uses shall be inventoried and designated as forest lands. Existing forest land uses shall be protected unless proposed changes are in conformance with the comprehensive plan.” Those forest uses were defined as follows: “(1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock.”

² The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission’s acknowledgment of each county’s land use regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev den, 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county’s plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer directly applied to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Foster v. Polk County*, 115 Or App 475 (1992); *Kenagy v. Benton County*, 115 Or App 131 (1992).

No information has been presented in the claim to establish that the claimant's desired division of tax lot 200 into 74 parcels and development of a dwelling on each parcel comply with the Goal 4 standards in place when the subject property was acquired on June 29, 1977.

The claimant acquired tax lot 108 on July 19, 1988. At that time, the property was subject to Benton County's forest zone, which was acknowledged by the Commission for compliance with Goal 4 on February 22, 1984. When the claimant acquired tax lot 108, the desired division and development of the subject property would have been governed by the county's forest zone and the applicable provisions of ORS 215 and OAR, division 6, then in effect.

Conclusions

Specific provisions of current zoning requirements, including minimum lot size and dwelling standards established by Goal 4, ORS 215.705 to 215.755 and 215.780 and OAR 660-006-0026 and 660-006-0027, were enacted after the claimant acquired the subject tax lots on June 29, 1977, and July 19, 1988, and do not allow the claimant's desired division or development of the property. However, the claim does not establish whether or to what extent the claimant's desired use of tax lot 200 complies with the standards for land divisions and development under Goal 4 in effect when the claimant acquired the property on June 29, 1977. Similarly, the claim does not establish whether or to what extent the claimant's desired use of tax lot 108 complies with the standards for land divisions and development in Benton County's acknowledged forest zone and Comprehensive Plan in effect when the claimant acquired the property on July 19, 1988.

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

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that 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 \$6,934,600 as the reduction in the subject property's fair market value due to current regulations. This estimate is based on information provided by a local real estate professional, based on the claimant's assertion that the subject property could be developed as alleged in the claim. For tax lot 200, the claim asserts that the subject property could have been divided into 74 two-acre dwelling sites. For tax lot 108, the claim asserts that the subject property could have been developed with one single-family dwelling.

Conclusions

As explained in Section V.(1) of this report, the current owner is Brand S Corporation, which acquired tax lot 200 on June 29, 1977, and tax lot 108 on July 19, 1988. 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 since the claimant 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 \$6,934,600.

Without an appraisal or other documentation, and without verification of whether or the extent to which the claimant's desired use of the subject property was allowed under the standards in effect when it acquired the property, it 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 Benton County has implemented through its current FC zone. These state land use regulations are not exempt under ORS 197.352(3)(E), to the extent they were enacted after the claimant acquired the subject property on June 29, 1977, and July 19, 1988. Provisions of Goal 4 in effect on June 29, 1977, and July 19, 1988, are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant 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 may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that the general statutory, goal and rule restrictions on residential division and development of the subject property are not exempt under ORS 197.352(3)(E) to the extent they were enacted after the claimant acquired the property. Provisions of Goal 4 in effect when the claimant acquired the subject property in June 29, 1977, and July 19, 1988, are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimant acquired the subject property are exempt under ORS 197.352(3)(E), and will also continue to apply to the claimant's use of the property. In

addition, the department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. These provisions include fire protection standards for dwellings and for surrounding forest lands. ORS 197.352(3)(B) specifically exempts regulations “restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . .” Accordingly, siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to the claimant’s use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws currently apply to that use and may continue to apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to 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 that are clearly applicable, given the information provided to the department in the claim. The claimant should be aware that the less information it has provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to its use of the subject property.

VI. FORM OF RELIEF

ORS 197.352 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 226.3-acre property into 75 lots and to develop a dwelling on each lot. The claim asserts that the laws enforced by the Commission or the department reduce the fair market value of the subject property by \$6,934,600. However, because the claim does not provide an appraisal or other specific documentation establishing how the specified restrictions reduce the fair market value of the subject property, and without verification of whether or the extent to which the claimant’s desired use of the property was allowed under the standards in effect when it acquired 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 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 Brand S Corporation to use the subject property for a use permitted at the time it acquired the property on June 29, 1977, and on July 19, 1988.

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 Brand S Corporation's division of tax lot 200 into 74 two-acre lots or to its development of a dwelling on each newly created lot: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted after June 26, 1977. These land use regulations will not apply to the claimant only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the property on June 26, 1977.
2. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Brand S Corporation's division of tax lot 108 from the subject property or its development of a dwelling on the newly created parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted after July 19, 1988. These land use regulations will not apply to the claimant only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the property on July 19, 1988.
3. The action by the State of Oregon provides the state's authorization to the claimant to use tax lot 200 for the uses described in this report, subject to the standards in effect on June 29, 1977. On that date, the property was subject to compliance with Goal 4. The action by the State of Oregon also provides the state's authorization to the claimant to use tax lot 108 for the use described in this report, subject to the standards in effect on July, 19, 1988. On that date, the property was subject to compliance with Benton County's acknowledged forest zone and the applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, then in effect.
4. 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.
5. 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).

6. 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 it 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. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 13, 2006. 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.