

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. M118568
(BALLOT MEASURE 37) OF	)	
Nancypat Dundas, CLAIMANT	)	

Claimant: Nancypat Dundas (the Claimant)

Property: Tax lot 902, Township 9S, Range 9W, Section 33, Lincoln County (the Property)

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

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

ORDER

The Claim is 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 Nancypat Dundas' division of the 78.21-acre property into 12 parcels or to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after February 28, 1974. These land use regulations will not apply to the claimant only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on February 28, 1974.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on February 28, 1974. On that date, the property was subject to the applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition).
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property

unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves 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 Deputy 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.

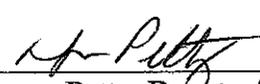
FOR DLCD AND THE LAND CONSERVATION  
AND DEVELOPMENT COMMISSION:

Lane Shetterly, Director

  
\_\_\_\_\_  
George Naughton, Deputy Director  
DLCD

Dated this 18<sup>th</sup> day of April, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:

  
\_\_\_\_\_  
Dugan Petty, Deputy Administrator  
DAS, State Services Division

Dated this 18<sup>th</sup> 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 197.352<sup>1</sup>, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

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

### **FOR INFORMATION ONLY**

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

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<sup>1</sup> 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.

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

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

April 18, 2006

**STATE CLAIM NUMBER:** M118568

**NAME OF CLAIMANT:** Nancypat Dundas

**MAILING ADDRESS:** P.O. Box 933  
Newport, Oregon 97365

**PROPERTY IDENTIFICATION:** Township 9S, Range 9W, Section 33  
Tax lot 902  
Lincoln County

**OTHER CONTACT INFORMATION:** Dawn Pavitt  
P.O. Box 5  
Newport, Oregon 97365

**DATE RECEIVED BY DAS:** June 7, 2005

**180-DAY DEADLINE:** April 22, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

The claimant, Nancypat Dundas, seeks compensation in the amount of \$765,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the 78.21-acre property into 12 parcels and to develop a dwelling on each parcel. The subject property is located near the rural community of Logsdon, in Lincoln 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, subject to Nancypat Dundas' providing documentation to demonstrate that the Nancypat Dundas Trust is a revocable trust. Department staff recommends that upon documentation of the claimant's ownership interest, 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

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<sup>1</sup> This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Ballot 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).

apply to Nancy Pat Dundas' division and development of the 78.21-acre property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and OAR 660, division 33, enacted or adopted after February 28, 1974. These laws will not apply to the claimant only to the extent necessary to allow the claimant to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on February 28, 1974. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On July 21, 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, evidence or information was received in response to the 10-day notice.

The comment is 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 comment has been considered by the department in preparing this report. (See comment letter in the department's claim file.)

### **IV. TIMELINESS OF CLAIM**

#### **Requirement**

ORS 197.352(5) (Ballot Measure 37, Section 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 Ballot 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 Ballot Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

#### **Findings of Fact**

This claim was submitted to DAS on June 7, 2005, for processing under OAR 125, division 145. The claim identifies Goal 3, ORS 92 and 215, OAR 660-015-0000 (3) and OAR 660, division 33, as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

## **Conclusions**

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

## **V. ANALYSIS OF CLAIM**

### **1. Ownership**

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

### **Findings of Fact**

The claimant, Nancypat Dundas, acquired the subject property on February 28, 1974, as reflected by a warranty deed included with the claim. At some point, the subject property was transferred to the Nancypat Dundas Trust. The claim does not establish whether the Nancypat Dundas Trust is a revocable trust. Transfer to a revocable trust does not constitute a change in ownership for purposes of ORS 197.352. Transfer to an irrevocable trust constitutes a change in ownership. The Lincoln County Assessor’s Office confirms that Nancypat Dundas, as trustee of the Nancypat Dundas Trust, is the current owner of the subject property.

### **Conclusions**

The claimant, Nancypat Dundas, is an “owner” of the subject property, as that term is defined by ORS 197.352(11)(C), as of February 28, 1974, provided that the Nancypat Dundas Trust is a revocable trust.

This report is based on the premise that the trust is revocable, and that the claimant is an “owner” as defined in ORS 197.352(11)(C). Disposition of this claim is conditioned upon the claimant’s establishing the nature of the trust prior to the issuance of the final report and order on this claim.

### **2. The Laws That are the Basis for This Claim**

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

### **Findings of Fact**

The claim indicates that the claimant desires to divide the subject property into a residential subdivision with 12 lots varying in size from 3.53 to 9.80 acres, as demonstrated in a tentative plat included with the claim. The claim states, “the division would have been allowed outright at time of purchase on February 28, 1974,” and “Statewide Planning Goal 3 limits both the type of use and size of residential parcels in a land division. Under current rules, all dwellings would

only be allowed as conditional use approvals. If allowed under the current rules, only one non-farming dwelling would be conditionally allowed on the property.”<sup>2</sup>

The claim is based generally on Lincoln County’s current Agricultural Conservation (AC-40) zone and the provisions of state law that require such zoning. The claimant’s property is zoned AC-40, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant’s property is “agricultural land” as defined by Goal 3.<sup>3</sup> Goal 3 became effective on January 25, 1975, and required that agricultural land as defined by the Goal be zoned Exclusive Farm Use (EFU) pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993).

ORS 215.263 (2005 edition) establishes 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 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. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

The claimant acquired the subject property on February 28, 1974, after the adoption of Senate Bill (SB) 100 (Chapter 80, Oregon Laws 1973, effective on October 5, 1973) but before the adoption of the statewide planning goals, effective on January 25, 1975. At that time, the subject property was not zoned by Lincoln County.

During the period between October 5, 1973, when SB 100 became effective, and January 25, 1975, when the statewide planning goals became effective, ORS 197.175(1) and 197.280 (1973 editions) required, in addition to any local plan or zoning provisions, that cities and counties exercise their planning responsibilities in accordance with the interim land use planning goals set forth in ORS 215.515 (1973 edition). *Petersen v. Klamath Falls*, 279 Or 249

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<sup>2</sup> The claim also cites ORS 92 as a land use regulation that restricts the use of the claimant’s property on the basis, generally, that the ORS 92 platting standards require compliance with the comprehensive plan. The claimant has not established how the requirements of ORS 92, in themselves, restrict the use of the subject property in a manner that reduces its fair market value. In addition, ORS 92, in general, was enacted prior to the claimant’s acquisition of the subject property and therefore, is exempt under ORS 197.352(3)(E). Absent an explanation how any specific provision of ORS 92 restricts the use of this subject property in a manner that reduces its fair market value, ORS 92 is not addressed further in this report.

<sup>3</sup> The claimant’s property is “agricultural land” because it contains Natural Resources Conservation Service Class I-IV soils.

(1977); see also, *Meeker v. Board of Comm'rs*, 287 Or 665 (1979) (review of a subdivision is an exercise of planning responsibilities requiring application of the goals); *State Housing Council v. Lake Oswego*, 48 Or App. 525 (1981) (noting that while "[l]and use planning responsibility is not defined in ORS ch 197, the Supreme Court has interpreted that term as including annexation approvals, *subdivision approvals* [emphasis added] and partition approvals.") citing *Petersen, Meeker and Alexanderson v. Polk County*, 285 Or 427 (1980). The claimant's desired use includes subdivision of her land. If the claimant had sought to create that use in 1974, as a matter of law, the use would have been subject to the interim planning goals at ORS 215.515.<sup>4</sup>

The following interim goals are directly applicable to this claim: "To preserve the quality of the air, water and *land* [emphasis added] resources of the state"; "To provide for the orderly and efficient transition from rural to urban land use"; "To protect life and property in areas subject to floods, landslides and other natural disasters"; "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation"; and "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." ORS 215.515 (1973 edition).

No information has been provided establishing whether or to what extent the claimant's desired division of the subject property for residential development complies with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time the claimant acquired the property on February 28, 1974.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimant, Nancy Pat Dundas, acquired the subject property in 1974 and do not allow the desired division and development of the property. However, the claim does not establish whether or to what extent the claimant's desired use of the subject property complies with the interim planning goals in effect when she acquired the property on February 28, 1974.

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 use 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.

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<sup>4</sup> The "interim" land use goals are set forth in ORS 215.515(1)(a) to (j) as follows: (a) "To preserve the quality of the air, water and land resources of the state," (b) "To conserve open space and protect natural and scenic resources," (c) "To provide for the recreational needs of citizens of the state and visitors," (d) "To conserve prime farm lands for the production of crops," (e) "To provide for the orderly and efficient transition from rural to urban land use," (f) "To protect life and property in areas subject to floods, landslides and other natural disasters," (g) "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation," (h) "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development," (i) "To diversify and improve the economy of the state" and (j) "To ensure that the development of properties within the state is commensurate with the character and the physical limitations of the land." ORS 215.515 (1973 edition).

In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

### **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 \$765,000 as the reduction in the subject property's fair market value due to current regulations. This amount is based on an appraisal submitted with the claim, performed by a certified appraiser and dated May 4, 2005.

#### **Conclusions**

As explained in Section V.(1) of this report, the current owner is Nancy Pat Dundas, who acquired the subject property on February 28, 1974. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant acquired the subject property may restrict the desired division and development of the property. The claimant estimates the reduction in value due to the restrictions to be \$765,000.

Although the claimant has provided an appraisal, without verification of whether or to what extent the claimant's desired use of the subject property was allowed under the standards in effect when the claimant 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 3, ORS 215 and OAR 660, division 33, which Lincoln County has implemented through its current AC-40 zone. With the exception of applicable provisions of ORS 215, including the interim land use planning goals in effect on February 28, 1974, these state land use regulations are not in effect when the claimant acquired the subject property.

## **Conclusions**

It appears that, with the exception of provisions of ORS 215 in effect on February 28, 1974, the general statutory, goal and rule restrictions on division and development of the claimant's property were not in effect when the claimant acquired the property. As a result, these laws are not exempt under ORS 197.352(3)(E). Provisions of ORS 215, including the interim statewide planning goals in effect when the claimant acquired the subject property in 1974, 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 also exempt under ORS 197.352(3)(E)2, and will continue to apply to the claimant's use of the property. 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 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 use that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimant should be aware that the less information she 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 her use of the subject property.

## **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced 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 78.21-acre property into 12 parcels and to develop a dwelling on each parcel. The claim asserts that the laws enforced by the Commission or the department reduce the fair market value of the subject property by \$765,000. Although the claim provides an appraisal, without verification of whether or to what extent the claimant's desired use of the property was allowed under the standards in effect when she 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 Nancypat Dundas to use the subject property for a use permitted at the time she acquired the property on February 28, 1974.

### **Conclusions**

Based on the record and subject to the claimant's establishing the revocability of the Nancypat Dundas Trust prior to the issuance of the final report and order on this claim, 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 Nancypat Dundas' division of the 78.21-acre property into 12 parcels or to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after February 28, 1974. These land use regulations will not apply to the claimant only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on February 28, 1974.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on February 28, 1974. On that date, the property was subject to the applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition).
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.
4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves 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 14, 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.