

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES AND
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. M122035
(BALLOT MEASURE 37) OF)	
Jane Horning, CLAIMANT)	

Claimant: Jane Horning (the Claimant)

Property: Township 2N, Range 3W, Section 11, Tax lots 100 and 200,
Section 12, Tax lot 300, Washington 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 Jane Horning's desired use of the subject property (to conduct four additional multi-day concert events each year in addition to the two events per year currently allowed, with the desired events lasting two to four days and involving amplified music, food and craft vendors, artistic exhibitions and overnight camping): the applicable provisions of Statewide Planning Goals 4 and 14, OAR 660-006-0025(3)(q), 0025(4)(e) and 0025(4)(y), OAR 660-006-0029(1)(a)-(c). 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 September 21, 1967 (tax lot 100) and July 19, 1972 (tax lots 200 and 300). This action does not affect the applicability of ORS 433.735 to 433.770 or 433.990(6).
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 September 21, 1967 (tax lot 100) and July 19, 1972 (tax lots 200 and 300).

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), which include (but may not be limited to) OAR 660-006-0029(1)(d), OAR 660-006-0029(3), and OAR 660-006-0035(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:

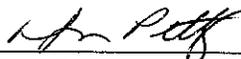
Lane Shetterly, Director



Cora R. Parker, Deputy Director
DLCD

Dated this 6th day of July, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 6th day of July, 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.

(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."

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.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

July 6, 2006

STATE CLAIM NUMBER: M122035

NAME OF CLAIMANT: Jane Horning

MAILING ADDRESS: 21277 Northwest Brunswick Canyon Road
North Plains, Oregon 97133

PROPERTY IDENTIFICATION: Township 2N, Range 3W, Section 11
Tax lots 100 and 200
Section 12, Tax lot 300
Washington County

OTHER CONTACT INFORMATION: Bob Horning
21277 Northwest Brunswick Canyon Road
North Plains, Oregon 97133

DATE RECEIVED BY DAS: August 24, 2005

180-DAY DEADLINE: July 9, 2006¹

I. SUMMARY OF CLAIM

The claimant, Jane Horning, seeks compensation in the amount of \$1,940,750 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 conduct four additional multi-day concert events each year (in addition to the two events per year currently allowed). The desired events last two to four days and involve amplified music, food and craft vendors, artistic exhibitions and overnight camping. The subject property is located at 21277 Northwest Brunswick Canyon Road, near North Plains, in Washington 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

¹ This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

not apply to Jane Horning's use of the property to conduct four additional multi-day concert events each year (in addition to the two events per year currently allowed, with the desired events lasting two to four days and involving amplified music, food and craft vendors, artistic exhibitions and overnight camping):: applicable provisions of Statewide Planning Goals 4 (Forest Lands) and 14 (Urbanization), and Oregon Administrative Rules (OAR) 660-006-0020, 660-006-0025 and 660-006-0035. These laws 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 in 1967 and 1972. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 3, 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, over 150 comments, evidence or information were received in response to the 10-day notice.

Many comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letters in the department's claim file.)

Some comments were relevant to whether the laws that are the basis for the claim are exempt under ORS 197.352(3). The comments raise issues of the risk of fire to public health and safety, and 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 Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on August 24, 2005, for processing under OAR 125, division 145. The claim identifies Goals 2, 4 and 14, ORS 215.296 and OAR 660-004-0020, 660-006-0025, 660-006-0029 and 660-006-0035 as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

The claimant’s husband, Richard Horning, acquired tax lots 200 and 300 on February 22, 1958, as reflected by a contract included with the claim. Richard and Jane Horning acquired tax lot 100 on September 21, 1967, as reflected by a warranty deed included with the claim. Claimant Jane Horning, acquired an ownership interest in tax lots 200 and 300 on July 19, 1972, when she was added to a warranty (fulfillment) deed, included with the claim. The Washington County Assessor’s Office confirms the claimant’s current ownership of the subject property.

Conclusions

The claimant, Jane Horning is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of September 21, 1967 (tax lot 100) and July 19, 1972 (tax lots 200 and 300). Richard Horning, Jane Horning’s husband, is a “family member,” as that term is defined by ORS 197.352(11)(A).

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 conduct four additional multi-day concert events each year (in addition to the two events per year currently allowed, with the desired events

lasting two to four days and involving amplified music, food and craft vendors, artistic exhibitions and overnight camping. According to the claim, the claimant is restricted from doing so by the following state land use regulations: Goals 2, 4 and 14, ORS 215.296, and OAR 660-004-0020, 660-006-0025, 660-006-0029 and 660-006-0035.

According to the claim, the claimant already holds two outdoor concert events per year on the subject property, along with "other activities typical of parks." There is no claim that these existing uses of the property are restricted. The claim also includes a specific reference to rules prohibiting the provision of water, sewer and electrical hook-ups, and certain siting standards for dwellings and other structures.

The claim is based generally on Washington County's current EFC (Exclusive Forest and Conservation) zone and the applicable provisions of state law that the EFC zone implements. The claimant's property is zoned EFC 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. OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994.

Together, Goal 4 and OAR 660, division 6 establish uses allowed on forest land, and standards for those uses.

Goal 14, also adopted January 25, 1975, requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and efficient transition from rural to urban land use. Goal 14 generally prohibits urban uses of land outside of urban growth boundaries. Goal 2 authorizes exceptions to the statewide planning goals, including Goal 4 and Goal 14. OAR 660-004-0020 contains standards for such exceptions. According to the claim, a recent land use decision by Washington County determined that the claimant's desired use is prohibited by or subject to Goals 2, 4 and 14, as well as ORS 215.296 and OAR 660-006-0025 and 660-006-0029. Goal 2 and the exceptions standards in 660-004-0020 establish a means by which the use may be allowed through an exception to Goals 4 and 14 and their implementing rules. If Goals 4 and 14 (and their implementing rules) do not apply to the claimant's use of the property, there is no basis for nor need to obtain an exception and as a result Goal 2 and its implementing rules would not apply to or restrict the claimant's desired use.

Goal 4 and OAR 660-006-0025 limit the uses authorized in forest zones. Many of the provisions of Goal 4 and OAR 660-006-0025 restrict uses other than the use identified in the claim. OAR 660-006-0025(3)(q) provides that certain types of gatherings are allowed outright under the rule. This rule does not restrict claimant's desired use because it allows these gatherings outright. OAR 660-006-0025(4)(e) places limitations on private parks and campgrounds. These limitations may apply to claimant's desired use of the property, depending on the details of that use and whether they qualify as a private park or a campground. The overnight camping associated with events desired by claimants appears to be subject to (4)(e). OAR 660-006-0025(4)(y) allows certain types of gatherings, subject to standards. These standards may apply to the claimant's desired use of the property, depending on the details of that use (length of time and number of people).

OAR 660-006-0029 contains siting standards for dwellings and structures in forest zones. The claim is not for restrictions on dwellings. The rules in OAR 660-006-0029(1)-(3) contain restrictions on the siting of structures that may apply to the claimant's desired use if the events or associated camping involve the construction of structures. OAR 660-006-0029(4)-(5) contain restrictions on dwellings only, and as a result do not apply.

OAR 660-006-0035 contains additional siting standards for dwellings and structures in a forest zone. As the claimant's desired use is not for a dwelling only the rules relating to structure may apply (again, to the extent a structure is involved in the desired events or associated camping). Only 660-006-0035(3) applies to structures, and it requires a fuel-free area around structures.

The claim states that the applicant seeks compensation for state land use regulations that prohibit the provision of water, sewer and electrical hook-ups, citing OAR 660-004-0025(4)(e) (according to the claimant's attorney, this was intended to be OAR 660-006-0025(4)(e)). This rule pertains to private parks and campgrounds on forest lands. Separate sewer, water or electrical service hook-ups are not allowed to individual camp sites. This rule applies to the claimant's desired use of overnight camping associated with the four additional concert festival events.

Finally, the claim also identifies ORS 215.296 as restricting the claimant's desired use of the property. Under state law, this statute applies only to lands zoned for exclusive farm use. The property is not zoned or planned for exclusive farm use and, as a result, this statute does not apply to the claimant's desired use of the property.

In conclusion, the following state land use regulations restrict the claimant's desired use of the property: Statewide Planning Goals 4 and 14, OAR 660-006-0025(3)(q), (4)(e) and (4)(y); OAR 660-006-0029(1)-(3), and 660-006-0035(3).

The claimant and the claimant's family acquired the property prior to the adoption of the statewide planning goals and their implementing regulations. The claimant's family acquired tax lots 200 and 300 on February 22, 1958 and the claimant acquired those tax lots in 1972. The claimant acquired tax lot 100 in 1967. In 1972, tax lots 200 and 300 were zoned F-1 by Washington County

Conclusions

The provisions of Statewide Planning Goals 4 and 14, OAR 660-006-0025(3)(q), (4)(e) and (4)(y); OAR 660-006-0029(1)-(3), and 660-006-0035(3) were all enacted or adopted after the claimant and the claimant's family acquired the subject property in 1958, 1967 and 1972 and restrict the claimant's desired use of the property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (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 \$1,940,750 as the reduction in the subject property's fair market value due to the regulations. This amount is based on an assessment by a real estate professional.

Conclusions

As explained in Section V.(1) of this report, the claimant is Jane Horning, whose family acquired tax lots 200 and 300 in 1958, and who acquired the subject property on September 21, 1967, and July 19, 1972. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant and the claimant's family acquired the subject property restrict the desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the property is a reduction of \$1,940,750.

Without an appraisal or other documentation it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the property. Nevertheless, based on the evidence in the record for this claim, the department determines that the land use regulations have had the effect of reducing the fair market value of the subject property to some extent.

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 Statewide Planning Goals 4 and 14, OAR 660-006-0025(3)(q), (4)(e) and (4)(y); OAR 660-006-0029(1)-(3), and 660-006-0035(3). All of these land use regulations were enacted or adopted after the claimant and claimant's family acquired the subject property.

OAR 660-006-0029(1)(d) requires that structures be sited on the parcel so that the risks associated with wildfire are minimized. This rule was adopted to restrict or prohibit activities for the protection of public safety, and is exempt under ORS 197.352(3)(B).

OAR 660-006-0029(3) requires evidence of a domestic water supply. This rule was adopted to restrict or prohibit activities for the protection of public health and safety, and is exempt under ORS 197.352(3)(B).

OAR 660-006-0035(3) requires owners of structures to maintain a primary fuel-free break area surrounding all structures in accordance with a publication of the Oregon Department of Forestry. This rule was adopted to restrict or prohibit activities for the protection of public health and safety, and is exempt under ORS 197.352(B).

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. Some of the specific siting standards for structures that are contained within the rules identified by the claimant are exempt under the public health and safety exemption of ORS 197.352(3)(B), as they were adopted to protect against fire or in order to ensure an adequate supply of domestic water for the use. None of the goal and rule restrictions on the claimant's desired use of the subject property were in effect when the claimant and claimant's family acquired the property in 1958, 1967 and 1972. As a result, these laws are not exempt under ORS 197.352(3)(E).

The specific provisions of OAR 660-006-0029 and 660-006-0035 relating to fire safety and water supply are exempt under ORS 197.352(3)(B) 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 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. 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 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.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present 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 desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$1,940,750. However, because

the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify the extent to which the non-exempt statewide planning goals and rules identified in Section V.(2) have had the effect of reducing the fair market value of claimant's property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based 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 land use regulations to allow Jane Horning to use the subject property for a use permitted at the time she acquired the property on September 21, 1967 (tax lot 100) and July 19, 1972 (tax lots 200 and 300).

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 Jane Horning's desired use of the subject property (to conduct four additional multi-day concert events each year in addition to the two events per year currently allowed, with the desired events lasting two to four days and involving amplified music, food and craft vendors, artistic exhibitions and overnight camping): the applicable provisions of Statewide Planning Goals 4 and 14, OAR 660-006-0025(3)(q), 0025(4)(e) and 0025(4)(y), OAR 660-006-0029(1)(a)-(c). 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 September 21, 1967 (tax lot 100) and July 19, 1972 (tax lots 200 and 300). This action does not affect the applicability of ORS 433.735 to 433.770 or 433.990(6).
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 September 21, 1967 (tax lot 100) and July 19, 1972 (tax lots 200 and 300).
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), which include (but may not be limited to) OAR 660-006-0029(1)(d), OAR 660-006-0029(3), and OAR 660-006-0035(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 June 16, 2006. Under OAR 125-145-0100(3), the department provided an opportunity for comments on the draft report to the claimant and any third party who had earlier submitted comments on the claim. The claimant, an attorney for the claimant, and third parties submitted comments on the draft report. The claimant and the claimant's attorney raised issues concerning the scope of the use allowed under the draft report, and those comments have been considered by the department. This report and order addresses the use the claimant described in the claim, not uses the claimant or the claimant's attorney describe in their comments on the department's draft report. In the event that the claimant wishes to make a claim for other uses of the property (such as "general use overnight camping"), the claimant will need to file a new claim for that use or uses.

The claimant's attorney notes that an error was made in the claim, and seeks clarification that the department's order will "not apply" OAR 660-006-0025(4)(e). The department's draft report, and this final report and order direct that OAR 660-006-0025, including 0025(4)(e) will not apply to the claimant's desired use of the property, which is to conduct four additional multi-day concert events each year (in addition to the two events per year currently allowed, with the desired events lasting two to four days and involving amplified music, food and craft vendors, artistic exhibitions and overnight camping).

The claimant's attorney and the claimant also appear to ask that language in the draft report relating to mass gatherings be removed. The claim did not seek compensation for state land use regulations restricting mass gatherings and the language in the draft report was intended to clarify that the decision would not affect the application of the mass gathering laws. Changes have been made to further clarify this in the final report and order.

Several comments were filed by third parties, seeking clarification that the application of fire safety provisions in laws administered by the department are not affected by the relief to be granted. Language has been added to the final report and order to clarify that laws relating to fire safety are not affected by this decision.