



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office Fax: (503) 378-5518

Third Floor/Measure 37 Fax: (503) 378-5318

Web Address: <http://www.oregon.gov/LCD>

October 19, 2007

To: Claimant and Interested Persons

From: Cora R. Parker, Acting Director



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M131503*

*Claimant: Jean Ann Mohr*

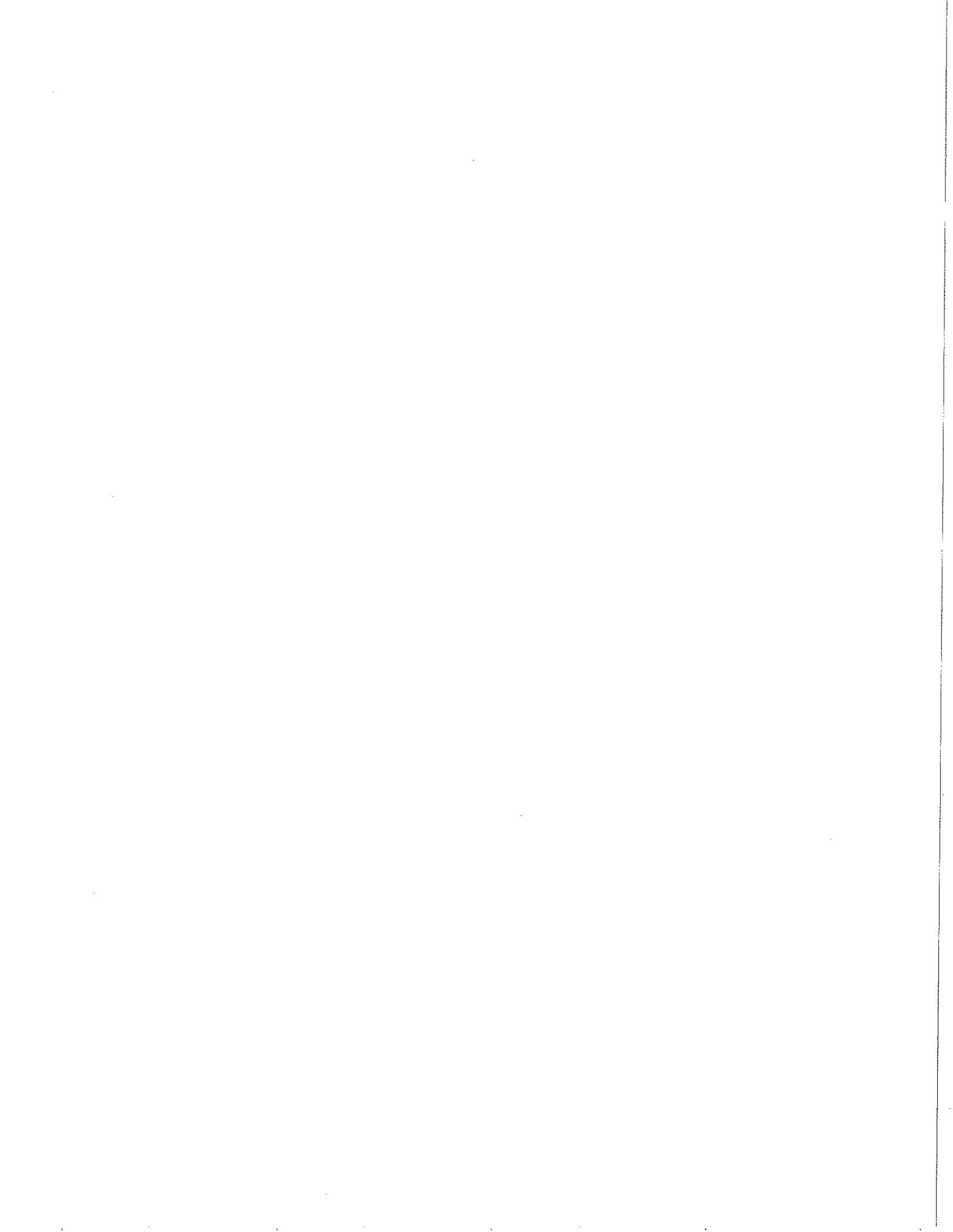
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Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Department of Land Conservation and Development's Draft Staff Report and Recommendation.

This Draft Staff Report and Recommendation sets forth the department's evaluation of and recommendation on the claim. Oregon Administrative Rule 125-145-0100(3) provides that the claimant (or the claimant's agent) and any third parties who submitted comments on the claim may submit written comments, evidence, and information in response to any third-party comments contained in the report, and to the staff report and recommendation itself. Such response must be filed no more than 15 calendar days after the date of mailing of this report. Any response from you must be delivered to the Oregon Department of Administrative Services (DAS), 1225 Ferry Street SE, U160, Salem, Oregon 97301, and will be deemed timely filed if either postmarked on the 15th day or actually delivered to DAS by the close of business on the 15th day.

This department will review any responses submitted, and a Final Order on the claim will be issued after such review.





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

October 19, 2007

**STATE CLAIM NUMBER:** M131503

**NAME OF CLAIMANT:** Jean Ann Mohr

**MAILING ADDRESS:** 2702 NE Elliot Avenue  
Gresham, Oregon 97030

**PROPERTY IDENTIFICATION:** Township 1N, Range 2W, Section 5  
Tax lot 600  
Washington County

**OTHER INTEREST IN PROPERTY:** Robert Mohr  
Janis Tipton  
Marilyn Moore

**DATE RECEIVED BY DAS:** November 29, 2006

**DEADLINE FOR FINAL ACTION:<sup>1</sup>** May 22, 2008

**I. SUMMARY OF CLAIM**

The claimant, Jean Ann Mohr, seeks compensation in the amount of \$3,850,000 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 35.42-acre subject property into seven approximately 5-acre parcels and to develop a dwelling on each resulting parcel. The subject property is located at NW West Union Road and Jackson Quarry Road, in Washington County. (See claim.)

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is not valid because the claimant's desired use of the subject property was prohibited by the zoning in effect when the claimant acquired it. Neither the Land Conservation and Development Commission

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<sup>1</sup> ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

(the Commission) nor the department has enforced laws that restrict the claimant's use of the private real property relative to the uses permitted when the claimant acquired the subject property. Therefore, no laws enforced by the Commission or the department have the effect of reducing the property's fair market value. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On July 25, 2007, pursuant to Oregon Administrative Rule (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, no written comments were received in response to the 15-day notice.

### **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 November 29, 2006, for processing under OAR 125, division 145. The claim identifies ORS 215.213(2)(a) and (b) and provisions of 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 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, Jean Ann Mohr, acquired the subject property no later than December 22, 1986, as reflected by a warranty deed included with the claim.<sup>2</sup> The Washington County Assessor’s Office confirms the claimant’s current ownership of the subject property.

### Conclusions

The claimant, Jean Ann Mohr, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of December 22, 1986.<sup>3</sup>

### 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 35.42-acre subject property into seven approximately 5-acre parcels and to develop a dwelling on each resulting parcel, and that current land use regulations prevent the desired use.

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<sup>2</sup> The claimant asserts that she acquired an interest in the subject property on April 25, 1935. However the claimant has not submitted documentation supporting that acquisition date. The only deed in the claim that verifies the claimant’s acquisition of the property is the December 22, 1986 deed, through which the claimant’s children are granted the property, subject to the claimant’s life estate. To substantiate an earlier acquisition, the claimant submitted a final account of the Estate of Frank Connell. However, the distribution upon which the final accounting relies on is based on Frank Connell’s will. The final account does not convey the subject property to the claimant, and it does not include a description of the subject property. On August 14, 2007, department staff sent a letter to the claimant requesting a complete copy of her father’s (Frank Connell) will or other documentation that establishes Jean Ann Mohr’s ownership of the subject property. This documentation has not been received to date. Absent documentation from the claimant to establish an earlier acquisition date, the department must rely on the available documentation to establish the date of acquisition.

<sup>3</sup> The claimant asserts that she acquired the property from family members. However, the claimant has not provided sufficient documentation to establish a family relationship. Absent evidence to establish that the claimant acquired the property from a family member, the department cannot evaluate the claim for compensation based on family ownership.

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimant's property is zoned EFU by Washington County 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>4</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.213, 215.263 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land in marginal lands counties 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 in marginal lands county under ORS 215.213. OAR 660-033-0130(4)(e) (applicable to non-farm dwellings in marginal lands counties) became effective on August 7, 1993.

The claimant acquired the subject property on December 22, 1986. At the time the claimant acquired the subject property, it was subject to Washington County's acknowledged comprehensive plan and EFU zone.<sup>5</sup> That EFU zone required a minimum of 76 acres for the creation of a new lot or parcel. At that time, the claimant's desired use of the property would have been subject to compliance with Goal 3, and OAR 660, division 5, as implemented through the county's acknowledged EFU zone, and the applicable provisions of ORS 215 then in effect.<sup>6</sup>

In 1986, ORS 215.263 (1985 edition) required that divisions of land in EFU zones be "appropriate for the continuation of the existing commercial agricultural enterprise within the area" or not smaller than the minimum size in the county's acknowledged plan. ORS 215.283(1)(f) (1985 edition) generally allowed farm dwellings "customarily provided in conjunction with farm use." Non-farm dwellings were allowed under ORS 215.283(3) if they were determined to be compatible with farm use, not interfere seriously with accepted farm practices, not materially alter the stability of the land use pattern in the area and be situated on generally unsuitable land for the production of farm crops and livestock.

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<sup>4</sup> The claimant's property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

<sup>5</sup> Washington County's EFU zone was acknowledged by the Commission for compliance with Goal 3 on July 30, 1984.

<sup>6</sup> After the county's comprehensive plan and land use regulations were acknowledged by the Commission as complying with the statewide planning goals, the goals and implementing rules no longer applied directly to individual 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. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

The claim does not establish that the claimant's desired division of the property into approximately 5-acre parcels, and development of dwellings on those parcels, satisfies the standards in effect when she acquired the property in 1986. To the contrary, the claimant's desired division and development was prohibited under the county's acknowledged EFU zone and the requirements of ORS 215 then in effect.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were enacted or adopted since the claimant acquired the property in 1986 and do not allow the claimant's desired division and development of the property. However, based on the record before the department, the claimant's desired use of the subject property was also prohibited by the zoning and statutory requirements in effect when she acquired the property in 1986. The claim does not establish that state laws enforced by the Commission or the department restrict the claimant's desired use of the subject property relative to the uses permitted when the claimant acquired the property in 1986.

### **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulations (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 \$3,850,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the claimant's assessment of the subject property's value.

### **Conclusions**

As explained in Section V.(2) of this report, the claimant's desired use of the property was prohibited by the zoning and statutory requirements in effect at the time she acquired the property. Therefore, land use regulations enforced by the Commission or the department since the claimant acquired the property in 1986 do not have the effect of reducing the fair market value of the property relative to uses allowed when the claimant acquired the property.

### **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 Goal 3, ORS 215 and OAR 660, division 33, which Washington County has implemented through its current EFU zone. With the exception of amendments to ORS 215 and OAR 660, those regulations were in effect when the claimant acquired the subject property.

## **Conclusions**

It appears that the general statutory, goal and rule restrictions on division and development of the subject property apply to and restrict the claimant's desired use of the property. With the exception of amendments enacted or adopted after the claimant acquired the subject property in 1986, these laws were enacted or adopted before the claimant acquired the property. These laws are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after the claimant acquired the property. However, as discussed in Section V.(2) of this report, the claimant's desired use was prohibited by the zoning and requirements of ORS 215 in effect when she acquired the property.

## **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced 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.

## **Conclusions**

Based on the record before the department, the claimant, Jean Ann Mohr has not established that she is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. The department recommends that this claim be denied because the claimant's desired use of the property was prohibited under the zoning and statutory requirements in effect when she acquired the property in 1986. Neither the Commission nor the department has enforced laws that restrict the claimant's desired use of the subject property relative to the uses permitted when she acquired the property, and therefore, no laws enforced by the Commission or the department have the effect of reducing the property's fair market value.

## **VII. NOTICE OF OPPORTUNITY TO COMMENT**

This staff report is not a final decision by the department and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides 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. Such response must be filed no more than 15 calendar days after the date this report is mailed to the claimant and any third parties. Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses must be delivered to the Oregon Department of Administrative Services (DAS), Measure 37 Unit, Risk Management-State Services Division, 1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 and will be deemed timely filed if either postmarked on the 15th day, or actually delivered to DAS by the close of business on the 15th day. Note: Please reference the claim number, claimant name and clearly mark your

comments as "Draft Staff Report comments." Comments must be submitted in writing only. Those comments submitted electronically or by facsimile will not be accepted.

