

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. M122394
(BALLOT MEASURE 37) OF)
Central Electric Cooperative, Inc., CLAIMANT)

Claimant: Central Electric Cooperative, Inc. (the Claimant)

Property: That certain real property located in Deschutes County, Oregon as described in Exhibit 1 to claimant's claim, which property is located within the following described tax lots:

Township 15S, Range 10E, Section 13, Tax lots 100, 400 and 702
Township 15S, Range 11E, Tax lot 2900
Township 15S, Range 11E, Section 17, Tax lots 700, 800, 1000, 1100 and 1200
Township 15S, Range 11E, Section 18, Tax lots 1300, 1500, 1600, 1601, 1700,
1701, 1800 and 1900
Township 15S, Range 12E, Tax lots 4700 and 5000
Township 15S, Range 12E, Section 16CA, Tax lots 500, 2100, 2200, 2300, 2400,
2500, 2600, 3500 and 3600
Township 15S, Range 12E, Section 16CB, Tax lots 900, 100, 1100, 1200, 1300,
1400, 1500, 1600 and 1700
Township 15S, Range 12E, Section 16C, Tax lot 200
Deschutes 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 law to Central Electric Cooperative's upgrade of its transmission-distribution line to the extent

that such upgrade is located within the area authorized under the easements contained in Exhibit 1 to the claim, and to the extent that the upgrade is encompassed within the use rights granted by those easements: ORS 215.130(5) and (9). This land use regulation will not apply to the claimant only to the extent necessary to allow it to use the area authorized under the easements contained in Exhibit 1 to the claim to construct, operate and maintain a 115 kV transmission line and associated poles within such area, and only to the extent that use was permitted when it acquired the easement on August 10, 1962.

2. The action by the State of Oregon provides the state's authorization to the claimant to use its property for the use described in this report, subject to the standards in effect on August 10, 1962.

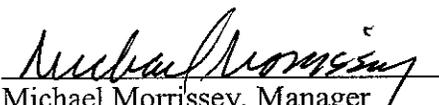
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject easement may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the easement unless the claimant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

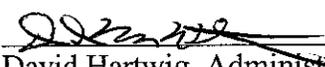
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for it to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the easement. 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 easement by the claimant.

This Order is entered by the Manager for the Measure 37 Division 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 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


Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 1st day of August, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 1st day of August, 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)

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

FOR INFORMATION ONLY

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

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation
August 1, 2006

STATE CLAIM NUMBER: M122394

NAME OF CLAIMANT: Central Electric Cooperative, Inc.

MAILING ADDRESS: P.O. Box 846
Redmond, Oregon 97756

PROPERTY IDENTIFICATION: That certain real property located in Deschutes County, Oregon as described in Exhibit 1 to claimant's claim, which property is located within the following described tax lots:

Township 15S, Range 10E, Section 13
Tax lots 100, 400 and 702
Township 15S, Range 11E
Tax lot 2900
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Tax lots 1300, 1500, 1600, 1601, 1700, 1701, 1800
and 1900
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3500 and 3600
Township 15S, Range 12E, Section 16CB
Tax lots 900, 100, 1100, 1200, 1300, 1400, 1500,
1600 and 1700
Township 15S, Range 12E, Section 16C
Tax lot 200
Deschutes County

OTHER CONTACT INFORMATION: Martin E. Hanson
1148 Northwest Hill Street
Bend, Oregon 97701

DATE RECEIVED BY DAS: September 19, 2005

180-DAY DEADLINE: August 2, 2006¹

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).

I. SUMMARY OF CLAIM

The claimant, Central Electric Cooperative, seeks compensation in the amount of \$7,905,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict its desired use of certain private real property. The claimant desires compensation or the right to upgrade an electrical transmission line and associated poles located on an easement owned by the claimant. The line that runs on the subject easement is a portion of an electric transmission line, referred to as the Jordan Road line, that runs across 4.56 miles of private real property located in northern Deschutes 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 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 Central Electric Cooperative's upgrade of the current power line to the extent that such use is located within the area of use authorized by the easements granted to Central Electric Cooperative prior to 1964 and included with the claim submittal: ORS 215.130(5) and (9). This law will not apply to the claimant's desired use 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 rights to construct, operate and maintain an electric transmission or distribution line or system on various dates in 1962. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On May 24, 2006, 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, three written comments were received in response to the 10-day notice.

One of the written comments does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject easement 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. The other comments are relevant, and include information and legal argument concerning whether the claimant's easement is private real property and therefore eligible for compensation under Measure 37, whether the restriction on the claimant's use of the subject easement reduces the fair market value of the property, and whether the subject easements were acquired in 2001 (after the alleged law reducing the value of the property was enacted) rather than 1962. These comments have been considered by the department in preparing this report, along with comments that have been received on the draft report (see section VII of 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 September 19, 2005, for processing under OAR 125, division 145. The claim identifies ORS 215.130(5) and (9) (Alteration of Nonconforming Use) 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 property that is the subject of this claim is defined by the easements that the claimant, Central Electric Cooperative (CEC), provided with the claim. These easements were acquired in 1961 and 1962.²

² According to the claim, the claimant built the Jordan Road line entirely with a “blanket easement” which they obtained in 1962. The claim includes eleven different right of way easements with acquisition dates of November 21, 1961, January 16 (two) and 29, 1962, February 2 and 14, 1962, March 6 and 21, 1962, May 25, 1962, August 10, 1962, and March 15, 1972. According to the claim, the claimant “moved a portion of the Jordan Road line subject to the claim again in 1972 under another easement dated March 1972 (still prior to the adoption of the statewide planning goals or ORS 215.130) that was redundant to the 1962 blanket easement.” For purpose of this

In 2001, CEC acquired replacement easements for much of the power line route (but, apparently, not all). To the extent that the new easements simply continue the same rights of use as the initial easements, and do not encompass any new area, the Department finds that CEC acquired the rights to construct, operate and maintain an electrical transmission or distribution system on August 10, 1962. However, in at least one case, there is a 1962 easement that was not a blanket easement, and the new easement in 2001 expanded the width of the easement area. The Department finds that the claimant acquired the rights to use the additional area for this easement area in 2001. The easement is located within tax lot 200 (grantor – Central Oregon Irrigation District) in T15S R12E section 16 (SW ¼) (easement #10 in Exhibit 1 to claim). The easement width for this easement was increased from 20 feet to 40 feet, and the 2001 date will apply to the area beyond the initial 20-foot width (hereafter, “Area 2”). The Department notes that easements contained in Exhibit 4 to the claim (the 2001 easements) appears to include other areas not covered by the 1962 easements. The relief provided by this report and accompanying order is limited to the area and rights granted by the 1961-1962 easements submitted as Exhibit 1 to the claim. To the extent that the claimant’s proposed rebuild of the transmission line is not within the geographic scope or use rights granted by the 1961-1962 easements, that use is not authorized by this report and accompanying order.

CEC’s property is “private property” for purposes of ORS 197.352, because CEC is a privately owned electrical cooperative.

Conclusions

The claimant, CEC is the current owner of property rights to construct, operate and maintain an electric distribution or transmission line or system under the easements submitted as Exhibit 1 to CEC’s claim. To the extent that the easement area described in Exhibit 4 to the claim extends outside of the area described in 1961-62 easements, or encompasses additional rights of use beyond the right to construct, operate and maintain an electric transmission or distribution system granted in the 1961-62 easements, CEC acquired these rights in 2001. The department makes no finding or conclusion that the rights authorized by the 1961-62 easements and included with the claim as Exhibit 1 are sufficient to authorize construction of the entire 115 kV transmission line that CEC desires to build, operate and maintain. CEC’s property that is the subject of this claim is private real property.³

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.

claim, the date the last easement was acquired on August 10, 1962 is the date the claimant acquired its rights to construct, operate and maintain an electric transmission or distribution line or system within the subject property. Further, two of the eleven easements are not “blanket” easements, but are instead a described width on either side of a described center line. One of these easements (Keith and Connie Cyrus, grantors, appears not to have been replaced with a new easement in 2001).

³ Central Electric Cooperative is an electric cooperative organized under ORS chapter 62 registered with the Oregon Secretary of State.

Findings of Fact

The claim indicates that “current land use regulations of Deschutes County and the state of Oregon limit the *upgrading* of the current Jordan Road line with CEC’s easement. For that reason state and local land use ordinances have restricted CEC’s use of its private property, its easement, for Measure 37 purposes.”

The claim is based generally on the applicable provisions of state law that limit the expansion of non-conforming uses. ORS 215.130(5) and (9). The subject property includes three zones, Exclusive Farm Use, Sisters/Cloverdale (EFU SC), Surface Mining (SM), and Multiple Use Agriculture (MUA 10).

According to the claimant, upgrade of the Jordan Road line, is limited or prohibited in all three zones, and is therefore subject to the criteria for nonconforming uses under ORS 215.130. Current land use regulations, particularly ORS 215.130(5) and (9), apply to the alteration of a nonconforming use, as follows:

(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.

(9) As used in this section, “alteration” of a nonconforming use includes:

- (a) A change in the use of no greater adverse impact to the neighborhood; and
- (b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood.

The claimant acquired the subject easements in 1962, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. The claimant has continuously owned the right to main interest in the subject property since 1962, which predates the November 15, 1972 effective date of PL-5, the county zoning ordinance, and the date when ORS 215.130(5) and 215.130(9) were enacted.⁴

The claim includes evidence that the claimant has been denied a permit to alter a non-conforming use under ORS 215.130 and corresponding provisions of the county’s ordinances. The Department notes that at least some portion of claimant’s desired use may be allowed under ORS 215.283 and corresponding provisions of Goal 3 and OAR 660-033. Nevertheless, the Department concludes that the restrictions on alterations of a non-conforming use in ORS 215.130(5) and (9) are applicable to the claimant’s desired use.

⁴ It appears that ORS 215.130 became applicable to the claimant’s use of the subject property on November 15, 1972 when Deschutes County adopted PL-5 and applied zoning to the subject property. ORS 215.130(9) was enacted in 1979, and ORS 215.130(5) in 1977.

Conclusions

The current criteria for the alteration of a nonconforming use established by ORS 215.130(5) and (9), were enacted or adopted after the claimant acquired the rights to construct, operate and maintain an electrical transmission line or system on August 10, 1962. This statute restricts the claimant's desired use of its property – to upgrade the Jordan Road line.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject line and easement 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 easement, and that may continue to apply to the claimant's use of the easement, 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 easement 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 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 \$7,905,000 as the reduction in the subject easement's fair market value due to the regulation(s). This amount is based on the cost to the claimant to bury the 4.65-mile portion of the Jordan Road line of \$2 million per mile, less the cost of the desired above-ground modification of \$300,000 per mile.⁵ Nothing in ORS 215.130(5) or (9) requires that the claimant bury the proposed transmission line upgrade. As a result, the Department cannot conclude on that basis that the identified land use regulations have had the effect of reducing the fair market value of the property. However, the Department notes that the effect of ORS 215.130(5) and (9) is that CEC is unable to obtain approval of its desired use of the property as an alteration of a non-conforming use. This would otherwise force CEC to seek approval of its desired use under ORS 215.283(1)(d) or other provisions of 215.283. Doing so would require the preparation of additional evidence and application to Deschutes County, which would cost CEC some amount. As a result, there has been *some* additional cost and *some* reduction in value as a result of the identified land use regulation.

Conclusions

As explained in Section V.(1) of this report, the claimant is Central Electric Cooperative who acquired the subject easement in 1962. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject private easement 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 acquired the subject easement restrict the

⁵ According to the claim, the reduction in fair market value in the claimant's easement is attributed to ORS 215.130, which requires that they excavate and bury their transmission-distribution line.

claimant's desired use of the property. The claimant estimates that the effect of the regulation(s) on the fair market value of the property is a reduction of \$7,905,000.

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 the claimant acquired the property, 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. The Department specifically does not agree with the assumptions claimant has based its estimate on. Nevertheless, based on the fact that some additional cost would be required of CEC as a result of not being able to permit the proposed use as an alteration of a nonconforming use, the department determines that it is more likely than not that the fair market value of the subject easement 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 ORS 215.130. This land use regulation was enacted or adopted after the claimant acquired the subject rights to construct, operate and maintain an electrical transmission or distribution system.

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 easement, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on upgrading the claimant's transmission-distribution line were in effect when the claimant acquired it in 1962. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimant acquired the subject easement are exempt under ORS 197.352(3)(E), and will continue to apply to the claimant's use of the easement. There may be other laws that continue to apply to the claimant's use of the subject easement 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 easement 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 easement 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 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 easement.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced a law that restricts the use of the subject easement 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 subject 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 easement by \$7,905,000. 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. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based likely have reduced the fair market value of the subject easement 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 Central Electric Cooperative to use the subject easement for a use permitted at the time it acquired the easement on August 10, 1962.

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 law to Central Electric Cooperative's upgrade of its transmission-distribution line to the extent that such upgrade is located within the area authorized under the easements contained in Exhibit 1 to the claim, and to the extent that the upgrade is encompassed within the use rights granted by those easements: ORS 215.130(5) and (9). This land use regulation will not apply to the claimant only to the extent necessary to allow it to use the area authorized under the easements contained in Exhibit 1 to the claim to construct, operate and maintain a 115 kV transmission line and associated poles within such area, and only to the extent that use was permitted when it acquired the easement on August 10, 1962.

2. The action by the State of Oregon provides the state's authorization to the claimant to use its property for the use described in this report, subject to the standards in effect on August 10, 1962.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject easement may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the easement 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 easement 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 Condition 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 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 easement. 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 easement by the claimant.

VII. COMMENTS ON THE DRAFT REPORT

Comments on the draft report were submitted by the claimant and by several owners of property affected by the claimant's desired use. These comments were considered by the department in preparing this report.