

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. M124466
(BALLOT MEASURE 37) OF)	
Ronald G. Simonds and)	
Anna L. Simonds, CLAIMANTS)	

Claimants: Ronald G. Simonds and Anna L. Simonds (the Claimants)

Property: Township 2N, Range 10E, Section 15D, Tax lots 900 and 1000, Hood River County (the Property)

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

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

ORDER

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Anna Simonds' division of the 9.56-acre subject property into three approximately 3-acre parcels or to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply to Anna Simonds 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 tax lot 1000 on June 26, 1972, and tax lot 900 on June 11, 1974.
2. The action by the State of Oregon provides the state's authorization to Anna Simonds to use tax lot 1000 for the use described in this report, subject to the standards in effect on June 26, 1972, and to use tax lot 900 for the use described in this report, subject to the standards in effect on June 11, 1974. On June 11, 1974, 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).

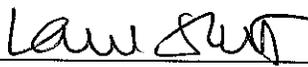
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Anna Simonds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

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

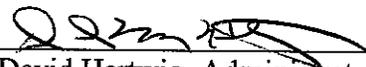
FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD

Dated this 8th day of September, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator

DAS, State Services Division

Dated this 8th day of September, 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, 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."

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

September 8, 2006

STATE CLAIM NUMBER: M124466

NAMES OF CLAIMANTS: Ronald G. Simonds
Anna L. Simonds

MAILING ADDRESS: 3960 Pheasant Drive
Hood River, Oregon 97031

PROPERTY IDENTIFICATION: Township 2N, Range 10E, Section 15D
Tax lots 900 and 1000
Hood River County

DATE RECEIVED BY DAS: March 17, 2006

180-DAY DEADLINE: September 13, 2006

I. SUMMARY OF CLAIM

The claimants, Ronald and Anna Simonds, seek compensation in the amount of \$400,000 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 claimants desire compensation or the right to divide the 9.56-acre subject property (consisting of 3.45-acre tax lot 900 and 6.11-acre tax lot 1000) into three approximately 3-acre parcels and to develop a dwelling on each parcel. The subject property is located at 3960 Pheasant Drive, near Hood River, in Hood River 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 in part. 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 Anna Simonds' division of the 9.56-acre subject property into three approximately 3-acre parcels and to her development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after Anna Simonds acquired each of the subject tax lots. These laws will not apply to Anna Simonds 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 tax lot 1000 on June 26, 1972, and tax lot 900 on June 11, 1974. (See the complete recommendation in Section VI. of this report.)

The department has further determined that Ronald Simonds' claim is not valid because he is deceased. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On July 3, 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, one written comment was received in response to the 10-day notice.

The comment does 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 letter in the department's claim file.)

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 March 17, 2006, for processing under OAR 125, division 145. The claim identifies provisions of Goal 3, ORS 215.780 and Hood River County Ordinance Article 7 and Hood River County Ordinance #89 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 claimants, Ronald and Anna Simonds, acquired tax lot 1000 on June 26, 1972, and tax lot 900 on June 11, 1974, as reflected by satisfaction of mortgage deeds included with the claim. Ronald Simonds passed away on April 19, 2006, as reflected by a death certificate provided by Hood River County. The Hood River County Assessor’s Office confirms Anna Simonds’ current ownership of the subject property.

Conclusions

Claimant Anna Simonds is an “owner” of tax lot 1000, as that term is defined by ORS 197.352(11)(C), as of June 26, 1972, and an “owner” tax lot 900, as of June 11, 1974. Claimant Ronald Simonds is not an “owner” because he is deceased as of April 19, 2006.

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 a 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 a claimant’s or a family member acquired the property.

Findings of Fact

The claim indicates that Anna Simonds desires to divide the 9.56-acre subject property into three approximately 3-acre parcels and to develop a dwelling on each parcel. It indicates that Goal 3, provisions of ORS 215.780, Hood River County Ordinance Article 7 and Hood River County Ordinance #89 and county restrictions prevent the desired use.¹

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 High Value Farm Land by Hood River County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the subject property is “agricultural land” as

¹ The claimants summarily cited numerous state land use laws as applicable to this claim, but did not establish how the laws either apply to the claimants’ desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of these regulations either do not apply to the claimants’ property or do not restrict the claimants’ desired use of the property in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants’ use of the subject property, based on the claimants’ asserted desired use

defined by Goal 3.² Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned 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.)

Claimant Anna Simonds acquired tax lot 1000 on June 26, 1972, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

She acquired tax lot 900 on June 11, 1974, after the adoption of Senate Bill 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. Hood River County's zoning for both the subject tax lots was Farm A-2 at the time of acquisition.

During the period between October 5, 1973, and January 25, 1975, 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 (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). Claimant Anna Simonds' desired use of tax lot 900 includes subdivision of land. If she 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 215.515.³

² The subject property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

³ The "interim" land use goals are set forth in ORS 215.515(1)(a) to (j) (1973 edition) 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,"

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 conserve prime farm lands for the production of crops"; "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).

One of the interim goals was to "conserve prime farm lands for the production of crops." Soil types are a determinant of prime farm land. It is unclear whether division and development of the prime farm land portion of the subject property could satisfy the interim goal requirement to "conserve prime farm lands for the production of crops."

No information has been provided establishing whether or to what extent Anna Simonds' 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 she acquired tax lot 900 on June 11, 1974.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after Anna Simonds acquired tax lot 1000 in 1972 and tax lot 900 in 1974 and do not allow the desired division or residential development of the property. These laws restrict the use of the subject property relative to the uses allowed when Anna Simonds acquired the property. However, the claim does not establish whether or the extent to which Anna Simonds' desired use of the subject property was permitted at the time she acquired tax lot 900 on June 11, 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 Anna Simonds has identified. There may be other laws that currently apply to her use of the subject property, and that may continue to apply to her 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 Anna Simonds seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

(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).

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 \$400,000 as the reduction in the subject property's fair market value due to the regulations that restrict Anna Simonds' desired use of the property. This amount is based on comparable property values of developable land in Hood River County.

Conclusions

As explained in Section V.(1) of this report, claimant Anna Simonds acquired tax lot 1000 on June 26, 1972, and tax lot 900 on June 11, 1974. 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 Anna Simonds acquired the subject property restrict the desired use of the property. Claimant Anna Simonds estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$400,000.

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 subject property. Nevertheless, based on the evidence in the record for this claim, the department determines 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 Hood River County has implemented through its current EFU zone. With the exception of applicable provisions of ORS 215 in effect when Anna Simonds acquired tax lot 900, all of these land use regulations were enacted or adopted after she acquired the subject property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that, with the exception of provisions of ORS 215 in effect in 1974 when Anna Simonds acquired tax lot 900, none of the general statutory, goal and rule restrictions on division and

development of the subject property were in effect when Anna Simonds acquired tax lot 1000 in 1972 and tax lot 900 in 1974. As a result, these laws are not exempt under ORS 197.352(3)(E). Applicable provision of ORS 215, including the interim planning goals set forth at ORS 215.515 (1973 edition), in effect when Anna Simonds acquired tax lot 900 in 1974, are exempt and will continue to apply to the subject property.

Other laws in effect when Anna Simonds acquired the subject property are exempt under ORS 197.352(3)(E) and will continue to apply to her use of the property. There may be other laws that continue to apply to her 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 Anna Simonds 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 Anna Simonds 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. Anna Simonds 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 subject 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 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 Anna Simonds' 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 \$400,000. 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. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which Anna Simonds' desired use of the subject property was allowed under the standards in effect when she acquired tax lot 1000 in 1972 and tax lot 900 in 1974. 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 all or parts of certain land use regulations to allow Anna Simonds to use the subject property for a use permitted at the time she acquired tax lot 1000 on June 26, 1972, and tax lot 900 on June 11, 1974.

Conclusions

Based on the findings, the department recommends that Ronald Simonds' claim be denied because he is not a present owner of the subject property. The department further recommends the claim otherwise 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 Anna Simonds' division of the 9.56-acre subject property into three approximately 3-acre parcels or to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply to Anna Simonds 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 tax lot 1000 on June 26, 1972, and tax lot 900 on June 11, 1974.
2. The action by the State of Oregon provides the state's authorization to Anna Simonds to use tax lot 1000 for the use described in this report, subject to the standards in effect on June 26, 1972, and to use tax lot 900 for the use described in this report, subject to the standards in effect on June 11, 1974. On June 11, 1974, 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 Anna Simonds 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 Anna Simonds 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 Anna Simonds 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 Anna Simonds 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 her use of the subject property.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on August 23, 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' 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.