

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. M124625
(BALLOT MEASURE 37) OF)
Mayme Neely and Daniel and Sandra Teall, CLAIMANTS)

Claimants: Mayme Neely and Daniel and Sandra Teall (the Claimants)

Property: Township 16S, Range 4W, Section 35, Tax lot 403, Lane 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 Mayme Neely's division of the 10.24-acre portion of the subject property into one-acre parcels and to her development of a dwelling on each parcel, and to Daniel and Sandra Teall's division of the two-acre portion of the property into one-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired the subject property. These land use regulations will not apply to Mayme Neely only to the extent necessary to allow her to use the 10.24-acre portion of 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 1970, and to Daniel and Sandra Teall to use the two-acre portion of the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property in 1998. The department acknowledges that the relief to which Daniel and Sandra Teall are entitled under ORS 197.352 will not allow them to use the two-acre portion of the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the property for the use described in this report, subject to the standards in effect when

Mayme Neely acquired the 10.24-acre portion of the subject property on October 8, 1970, and when Daniel and Sandra Teall acquired the two-acre portion of the subject property on November 30, 1998. On October 8, 1970, the property was subject to Lane County's AGT zone. On November 30, 1998, the two-acre portion of the property was subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently in effect.

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

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them 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 claimants 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 claimants.

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 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:

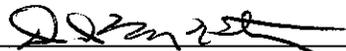
Lane Shetterly, Director



Cora R. Parker, Deputy Director
DLCD

Dated this 18th day of September, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division

Dated this 18th 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 18, 2006

STATE CLAIM NUMBER: M124625

NAMES OF CLAIMANTS: Mayme Neely
Daniel and Sandra Teall

MAILING ADDRESS: c/o Daniel and Sandra Teall
CMR 454, Box 2852
APO, AE 09250

PROPERTY IDENTIFICATION: Township 16S, Range 4W, Section 35
Tax lot 403
Lane County

DATE RECEIVED BY DAS: March 27, 2006

180-DAY DEADLINE: September 23, 2006

I. SUMMARY OF CLAIM

The claimants, Mayme Neely and Daniel and Sandra Teall, seek compensation in the amount of \$300,000 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 12.24-acre subject property into one-acre parcels and to develop a dwelling on each parcel. The subject property is located at 91177 and 91179 River Road, near Junction City, in Lane 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 Mayme Neely's division of the 10.24-acre portion of the subject property into one-acre parcels and to her development of a dwelling on each parcel, and to Daniel and Sandra Teall's division of the two-acre portion of the subject property into one-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after each claimant acquired the subject property. These land use regulations will not apply to Mayme Neely only to the extent necessary to allow her to use the 10.24-acre portion of the subject property for the use described in this report, and

only to the extent that use was permitted when she acquired that portion in 1970, and will not apply to Daniel and Sandra Teall to the extent necessary to allow them to use the two-acre portion of the subject property for the use described in this report, and only to the extent that use was permitted when they acquired that portion in 1998. The department acknowledges that the relief to which Daniel and Sandra Teall are entitled under ORS 197.352 will not allow them to use the two-acre portion of the subject property in the manner set forth in the claim.

The department has also determined that this claim is not valid as to Mayme Neely for the two-acre portion of the subject property because she is not an owner of the two-acre portion. This claim is not valid as to Daniel and Sandra Teall for the 10.24-acre portion of the subject property because they are not owners of the 10.24-acre portion. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On July 18, 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, two written comments were received in response to the 10-day notice.

The comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the 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.)

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 27, 2006, for processing under OAR 125, division 145. The claim identifies Lane County's Exclusive Farm Use (EFU) zone 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

Claimant Mayme Neely acquired the subject property on October 8, 1970, as reflected by a warranty deed included with the claim. On March 5, 1990, Mayme Neely conveyed the subject property to claimants Daniel and Sandra Teall, reserving for herself a life estate, as reflected by a bargain and sale deed included with the claim. That life estate reserved in Mayme Neely gave her exclusive right to use the property during her lifetime. Daniel and Sandra Teall’s 1990 future interest did not provide them with any present right to use the subject property during the term of Mayme Neely’s life estate. On November 30, 1998, Mayme Neely relinquished her life estate and right to exclusive use of a two-acre portion of the subject property with an existing dwelling at 91177 River Road, as reflected by an agreement included with the claim. As of that date, Mayme Neely no longer has any ownership interest in that two-acre portion of the subject property with an existing dwelling, and Daniel and Sandra Teall acquired a present ownership interest in that two-acre portion. The Lane County Assessor’s Office confirms the claimants’ current ownership of the subject property.

Conclusions

The claimants, Mayme Neely and Daniel and Sandra Teall, are each “owners” of a portion of the subject property as that term is defined by ORS 197.352(11)(C). Mayme Neely has been an owner of the 10.24-acre portion since October 8, 1970. Daniel and Sandra Teall have been “owners” of the two-acre portion since November 30, 1998. Mayme Neely is a “family member” of Daniel and Sandra Teall, as that term is defined by ORS 197.352(11)(A), as to the two-acre portion they presently own. Mayme Neely is not an owner of the two-acre portion of the subject property, and Daniel and Sandra Teall are not owners of the 10.24-acre portion of the property, as the term “owner” is defined by ORS 197.352(11)(C).

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 claimants’ 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 claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the 12.24-acre subject property into one-acre parcels and to develop a dwelling on each parcel, and that the current zoning prohibits the desired use.

The claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land. The claimants' property is zoned EFU by Lane County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.¹ 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 the development of dwellings on existing or any proposed parcel on that land.

ORS 215.780 generally 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 215.780(5) recognized minimum lot sizes less than 80 acres that had been acknowledged by the Commission. The Commission has acknowledged Lane County's EFU-30-acre zone. 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 a 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 Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which became effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Goal 14 would likely apply to the division of the subject property into parcels of less than two acres. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses. Goal 14 became effective on January 25, 1975.

Mayme Neely acquired the subject property in 1970, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. In 1970, the subject property was zoned by Lane County as Agriculture, Grazing, Timber-Raising (AGT), which established a one-acre minimum lot size for new lots or parcels.

¹ The claimants' property is "agricultural land" because it contains National Resources Conservation Service Class I-IV soils.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, were enacted or adopted after Mayme Neely acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when Mayme Neely acquired the property.

As explained in Section V.(1), Mayme Neely is not an “owner” of the two-acre portion of the subject property and Daniel and Sandra Teall are not “owners” of the 10.24-acre portion of the subject property, as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict the claimants’ use of those portions of the private real property for which they have no present ownership interest in a manner that reduces the fair market value of the property.

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 claimants have identified. There may be other laws that currently apply to the claimants’ use of the subject property and that may continue to apply to the claimants’ 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 property until there is a specific proposal for that use. When the claimants seek 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 \$300,000 as the reduction in the subject property’s fair market value due to the regulations that restrict the claimants’ desired use of the property. This amount is based on a comparative market analysis included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are Mayme Neely who acquired the subject property in 1970 and her son-in-law Daniel Teall and her daughter Sandra Teall. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the 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 Mayme Neely acquired the subject property restrict Mayme Neely’s desired use of the 10.24-acre portion of the subject property and Daniel and Sandra Teall’s desired use of the two-acre portion of the subject property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$300,000.

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 since Mayme Neely acquired the property.

As explained in Section V.(1) of this report, Mayme Neely is not an “owner” of the two-acre portion of the subject property, and Daniel and Sandra Teall are not “owners” of the 10.24-acre portion of the subject property, as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict their use of the property in a manner that reduces the fair market value of 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 relative to the uses permitted when Mayme Neely acquired the property, including applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, which Lane County has implemented through its current EFU zone.

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 none of the general statutory, goal and rule restrictions on division and development of the claimants’ property were in effect when Mayme Neely acquired the subject property in 1970. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when Mayme Neely acquired the subject property are exempt under ORS 197.352(3)(E) and will continue to apply to the claimants’ use of the property. There may be other laws that continue to apply to the claimants’ 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 claimants seek 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).

As explained in Section V.(1) of this report, Mayme Neely is not an “owner” of the two-acre portion of the subject property and Daniel and Sandra Teall are not “owners” of the 10.24-acre portion of the subject property, as that term is defined in ORS 197.352(11)(C). The issue of whether any laws are exempt from ORS 197.352 is not relevant to the claimants’ claim relative to those portions they do not own.

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 Mayme Neely's use of the 10.24-acre portion of the subject property and Daniel and Sandra Teall's use of the two-acre portion 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 \$300,000. 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 Mayme Neely's use of the 10.24-acre portion of the subject property and Daniel and Sandra Teall's use of the two-acre portion of the subject property were allowed under the standards in effect when Mayme Neely acquired the 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 all or parts of certain land use regulations to allow Mayme Neely to use the 10.24-acre portion of the subject property for a use permitted at the time she acquired the property on October 8, 1970, and to allow Daniel and Sandra Teall to use the two-acre portion of the subject property for a use permitted at the time they acquired the two-acre portion on November 30, 1998.

At the time Daniel and Sandra Teall acquired an interest in the two-acre portion of the subject property, it was zoned EFU by Lane County and subject to the current lot size and dwelling standards under Goal 3, ORS 215 and OAR 660, division 33, and as described in Section V.(2) of this report.

In addition to the applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, in effect when Daniel and Sandra Teall acquired the two-acre portion of the subject property on November 30, 1998, there may be other laws that apply to these claimants' use of the property. 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 claimants have 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 claimants

should be aware that the less information they have provided to the department in their claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the property.

Conclusions

Based on the record before the department, the claimants, Mayme Neely and Daniel and Sandra Teall, have not established that they are entitled to relief under ORS 197.352(1) for the portions of the subject property they do not presently own because Mayme Neely is not an owner of the two-acre portion of the subject property and Daniel and Sandra Teall are not owners of the 10.24-acre portion of the subject property. Therefore, the department recommends that this claim be denied for Mayme Neely as to the two-acre portion of the subject property, and be denied for Daniel and Sandra Teall as to the 10.24-acre portion of the subject property.

Based on the record, the department further recommends that the claim be otherwise 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 Mayme Neely's division of the 10.24-acre portion of the subject property into one-acre parcels and to her development of a dwelling on each parcel, and to Daniel and Sandra Teall's division of the two-acre portion of the property into one-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, enacted or adopted after each claimant acquired the subject property. These land use regulations will not apply to Mayme Neely only to the extent necessary to allow her to use the 10.24-acre portion of 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 1970, and to Daniel and Sandra Teall to use the two-acre portion of the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property in 1998. The department acknowledges that the relief to which Daniel and Sandra Teall are entitled under ORS 197.352 will not allow them to use the two-acre portion of the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the property for the use described in this report, subject to the standards in effect when Mayme Neely acquired the 10.24-acre portion of the subject property on October 8, 1970, and when Daniel and Sandra Teall acquired the two-acre portion of the subject property on November 30, 1998. On October 8, 1970, the property was subject to Lane County's AGT zone. On November 30, 1998, the two-acre portion of the property was subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently in effect.

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

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them 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 claimants 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 claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on August 31, 2006. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.