

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. M124668
(BALLOT MEASURE 37) OF)
Lucile P. Ketchum and William P. Ketchum, CLAIMANTS)

Claimants: Lucile P. Ketchum and William P. Ketchum (the Claimants)

Property: Township 2N, Range 12E, Section 35, Tax lot 4100, Wasco 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 the Lucile and William P. Ketchum's division of the 146-acre subject property into two- to five-acre parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after each claimant acquired the subject property. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Lucile Ketchum acquired the property on October 8, 1963, and only to the extent that use was permitted when William P. Ketchum acquired the property on December 22, 1976.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect when Lucile Ketchum acquired the property on October 8, 1963, and when William P. Ketchum acquired the property on December 22, 1976. On December 22, 1976, the property was subject to applicable provisions of Goals 3 and 4 and ORS 215 then 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.

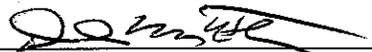
FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:
Lane Shetterly, Director



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: M124668

NAMES OF CLAIMANTS: Lucile P. Ketchum and William P. Ketchum

MAILING ADDRESS: 6282 Chenowith Road
The Dalles, Oregon 97058

PROPERTY IDENTIFICATION: Township 2N, Range 12E, Section 35
Tax lot 4100
Wasco County

DATE RECEIVED BY DAS: March 29, 2006

180-DAY DEADLINE: September 25, 2006

I. SUMMARY OF CLAIM

The claimants, Lucile and William P. Ketchum, seek compensation in the amount of \$2,000,310 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 146-acre subject property into two- to five-acre parcels and to develop a dwelling on each parcel. The subject property is located at 6282 Chenowith Road, near The Dalles, in Wasco County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Lucile and William P. Ketchum's division of the 146-acre subject property into two- to five-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6, and 33, enacted or adopted after each claimant acquired the subject property. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Lucile Ketchum acquired the property on October 8, 1963, and only to the extent that use was permitted when William P. Ketchum acquired the property on December 22, 1976. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On July 13, 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, no written comments were received in response to the 10-day notice.

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on March 29, 2006, for processing under OAR 125, division 145. The claim identifies ORS 197 and 215, OAR 660, divisions 15, and 33, and Wasco County's zoning ordinances 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 Lucile Ketchum acquired the subject property from her husband William D. Ketchum on October 8, 1963, as reflected by a deed included with the claim. William D. Ketchum acquired the subject property on February 12, 1930, as evidenced by a plant service report included with the claim. On December 14, 1976, William D. and Lucile Ketchum transferred the property to the Ketchum Family Trust with themselves and their son, claimant William P. Ketchum, as trustees, as reflected by a trust agreement and bargain and sale deed included with the claim.¹ A June 9, 2005, tax statement submitted with the claim establishes the claimants' current ownership of the subject property.

Conclusions

The claimants, Lucile and William P. Ketchum, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C). Lucile Ketchum acquired the subject property on October 8, 1963. William P. Ketchum acquired the subject property on December 22, 1976. William D. Ketchum is a "family member" of both claimants, as defined by ORS 197.352(11)(A), and acquired the subject property on February 12, 1930.

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 146-acre subject property into two- to five-acre parcels and to develop a dwelling on each parcel, and that current land use regulations prevent this desired use.²

The claim is based generally on the applicable provisions of state law that require forest and mixed farm-forest zoning and restrict uses on land zoned forest and mixed farm-forest. The majority of the claimants' property (the area north of the county road and the western portion of the area south of the county road) is zoned Forest (F2-80) by Wasco County, as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimants' property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on

¹ Transfer of property to a revocable trust does not result in a change of Lucile Ketchum's ownership for the purposes of ORS 197.352.

² 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 the regulations either do not apply to the claimants' property or do not restrict the use of the claimants' 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.

September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

The remainder of the claimants' property (the eastern portion of the area south of the county road) is zoned Forest-Farm (FF-10) by Wasco County, which is a mixed agricultural and forest land zone, as required by Goal 4 and the implementing provisions of OAR 660-006-0050 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable, based on the predominant use of the tract on January 1, 1993.³ Depending on the predominant use on that date, the property is subject to either the requirements for dwellings applicable under Exclusive Farm Use (EFU) zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the 80-acre minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Wasco County's FF-10 zone is 10 acres. The claimants' property cannot be divided into parcels smaller than 10 acres.

Lucile Ketchum acquired the subject property in 1963 and the Ketchum family first acquired the subject property in 1930, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established under Goal 4 for lands zoned for forest use and for mixed farm-forest use and the statutory and rule restrictions under applicable provisions of ORS 215 and OAR 660, divisions 6 and 33, were all enacted or adopted after Lucile Ketchum and the Ketchum family acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when Lucile Ketchum and the Ketchum family acquired the property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

³ No information was provided to the department regarding the predominant use of the property on January 1, 1993.

Findings of Fact

The claim includes an estimate of \$2,000,310 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 real estate professional's opinion submitted by the claimants that indicates the subject property is worth \$70,000 per parcel.

Conclusions

As explained in Section V.(1) of this report, the claimants are Lucile and William P. Ketchum whose family acquired the subject property in 1930. 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 the Ketchum family acquired the subject property restrict the claimants' desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$2,000,310.

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 the Ketchum family acquired the property.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property relative to the uses permitted when the Ketchum family acquired the property, including applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Wasco County has implemented through its current F2-80 and FF-10 zones. All of these land use regulations were enacted or adopted after the Ketchum family acquired the subject property.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the Ketchum family acquired the property on February 12, 1930. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the Ketchum family acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' 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 \$2,000,310. 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 the claimants' desired use of the subject property was allowed under the standards in effect when the Ketchum family 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 Lucile and William P. Ketchum to use the subject property for a use permitted at the time Lucile Ketchum acquired the property on October 8, 1963, and at the time William P. Ketchum acquired the property on December 22, 1976.

William P. Ketchum acquired the subject property after the adoption of the statewide planning goals but before the Commission acknowledged the Wasco County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged the county's plan and land use regulations when William P. Ketchum acquired the subject property on December 22, 1976, the statewide planning goals, and Goals 3 and 4 in particular, applied directly to William P. Ketchum's property when he acquired it.⁴

⁴ The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of each county's land use regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer directly applied to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983).

As adopted in 1975, Goal 3 required that agricultural lands be preserved and zoned for EFU pursuant to ORS 215. Goal 4, as adopted in 1975, required that forest lands be designated for forest uses. Depending on whether the property would have been subject to Goal 3 or 4 when William P. Ketchum acquired, it would have been subject to either EFU zoning pursuant to ORS 215 or forest zoning adequate to retain forest lands for forest uses.

Under Goal 3, the state standards for a division of land required that the created lots or parcels be of a size "appropriate for the continuation of the existing commercial agricultural enterprise within the area." (See Goal 3.) Further, ORS 215.263 (1975 edition) required that all land divisions subject to EFU zoning comply with the legislative intent in ORS 215.243 (Agricultural Land Use Policy). Thus, under Goal 3, the opportunity to divide the subject property when William P. Ketchum acquired it on December 22, 1976, was limited to new lots or parcels that were (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area, and (2) shown to be consistent with the legislative intent in ORS 215. At that time, under Goal 3, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1975 edition),⁵ and non-farm dwellings were subject to ORS 215.213(3) (1975 edition).⁶ Other uses were authorized and governed by the applicable provisions under Goal 3 and ORS 215.213.

Goal 4 was to "to conserve forest lands for forest uses" and required, "Lands suitable for forest uses shall be inventoried and designated as forest lands. Existing forest land uses shall be protected unless proposed changes are in conformance with the comprehensive plan." Those forest uses were defined as follows: "(1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock." Specifically, Goal 4 only allowed land divisions that would protect commercial forest lands for commercial forest uses. Dwellings in forest zones could only be allowed if found to be "necessary and accessory" to one of the enumerated forest uses listed in Goal 4.⁷

However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Foster v. Polk County*, 115 Or App 475 (1992); *Kenagy v. Benton County*, 115 Or App 131 (1992).

⁵ Under ORS 215.213, a farm dwelling could be established on agricultural land only if the farm use to which the dwelling relates exists (*Newcomer v. Clackamas County*, 92 Or App 174, modified 94 Or App 33 (1988) and *Matteo v. Polk County*, 11 Or LUBA 259, 263 (1984), affirmed without opinion 70 Or App 179 (1984)). Guidance on the application of the statutory standards for farm and non-farm dwellings in EFU zones can be found in the Commission rules (OAR 660, division 5, adopted on July 21, 1982, amended on June 7, 1986, and repealed on August 7, 1993).

⁶ When determining whether land is "generally unsuitable for the production of farm crops and livestock" under ORS 215.213(3), the entire parcel or tract must be evaluated rather than a portion thereof. *Smith v. Clackamas County*, 313 Or 519 (1992).

⁷ Goal 4 prohibited uses that were not enumerated by Goal 4 as permissible uses for forest lands as well as those that were not necessary and accessory to an enumerated forest use. *Lamb v. Lane County*, 7 Or LUBA 137 (1983). Dwellings in forest lands were required to be "necessary and accessory" to show that such dwellings complied with the Goal 4 requirement that local land use regulations must "conserve forest lands for forest uses." *1000 Friends v. LCDC (Curry County)*, 301 Or 447 (1986). A dwelling that may "enhance" forest uses is not "necessary and accessory" to a forest use to the extent required by Goal 4. *1000 Friends of Oregon v. LCDC (Lane County)*, 305 Or 384 (1988). For additional guidance, the Goal 4 provisions were interpreted under OAR 660, division 6, effective

No information has been presented in the claim to establish that William P. Ketchum's desired division of the subject property into two- to five-acre parcels and his development of a dwelling on each parcel comply with the Goal 3 or 4 standards in effect when William P. Ketchum acquired the subject property in 1976.

In addition to the applicable provisions of Goals 3 and 4 and ORS 215 in effect when William Ketchum acquired the property on December 22, 1976, there may be other laws that 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, and depending on when they were enacted or adopted, may continue to apply to the claimants' property. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D) and will continue to apply to the subject property on that basis.

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 subject property.

Conclusions

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to the Lucile and William P. Ketchum's division of the 146-acre subject property into two- to five-acre parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after each claimant acquired the subject property. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Lucile Ketchum acquired the property on October 8, 1963, and only to the extent that use was permitted when William P. Ketchum acquired the property on December 22, 1976.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect when Lucile Ketchum acquired the property on October 8, 1963, and when William P. Ketchum acquired the property on December 22, 1976. On December 22, 1976, the property was subject to applicable provisions of Goals 3 and 4 and ORS 215 then in effect.

on September 1, 1982, in *1000 Friends of Oregon v. LCDC (Lane County)* and in *1000 Friends v. LCDC (Curry County)*.

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 September 1, 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.