

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. M125000  
(BALLOT MEASURE 37) OF )  
Moore Orchards, Inc., CLAIMANT )

Claimant: Moore Orchards, Inc. (the Claimant)

Property: Township 2N, Range 11E, Section 7, Tax lots 500 and 700  
Hood River County (the Property)

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

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

ORDER

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Moore Orchards, Inc.'s division of tax lot 500 and the northern 62 acres of tax lot 700 into 246 parcels and division of the southern 80 acres of tax lot 700 into 16 five-acre parcels and to its development of a dwelling on each parcel: applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33. These laws will not apply to the claimant only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired tax lot 500 and the northern 62 acres of tax lot 700 in 1960 and when it acquired the southern 80 acres of tax lot 700 in 1972.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the property for the use described in this report, subject to the standards in effect on December 23, 1960, and March 15, 1972. On March 15, 1972, the southern 80 acres of tax lot 700 were zoned A-1 farm zone and subject to the applicable provisions of ORS 215 (1971 edition) 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 claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

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

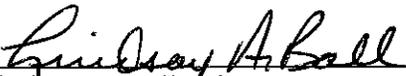
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for it to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to its use of the subject property.

This Order is entered by the Manager for the Measure 37 Services Division 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 Director of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

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

  
Michael Morrissey, Manager  
DLCD, Measure 37 Division  
Dated this 10<sup>th</sup> day of October, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
Lindsay A. Ball, Director  
DAS  
Dated this 10<sup>th</sup> day of October, 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**

October 10, 2006

**STATE CLAIM NUMBER:** M125000

**NAME OF CLAIMANT:** Moore Orchards, Inc.

**MAILING ADDRESS:** 2399 Lacey Road  
Hood River, Oregon 97031

**PROPERTY IDENTIFICATION:** Township 2N, Range 11E, Section 7  
Tax lots 500 and 700  
Hood River County

**DATE RECEIVED BY DAS:** April 18, 2006

**180-DAY DEADLINE:** October 15, 2006

**I. SUMMARY OF CLAIM**

The claimant, Moore Orchards, Inc., seeks compensation in the amount of \$25,548,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide tax lot 500 and the northern 62 acres of tax lot 700 into 246 parcels and to divide the southern 80 acres of tax lot 700 into 16 five-acre parcels and to develop a dwelling on each parcel.<sup>1</sup> The subject property is located at 235 and 2399 Lacey Drive and 2395 Stricker 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. 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 Moore Orchards, Inc.'s division of tax lot 500 and the northern 62 acres of tax lot 700 into 246 parcels and division of the southern 80 acres of tax lot 700 into 16 five-acre parcels and to its development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands), 4 (Forest Lands) and 14 (Urbanization); ORS 215; and Oregon Administrative Rules (OAR) 660, divisions 6, and 33. These laws will not apply to the claimant only to the extent necessary to allow it to use the subject property for the use described

---

<sup>1</sup> The subject property includes two tax lots. Tax lot 500 consists of 32.63 acres, and tax lot 700 consists of 142.16 acres.

in this report, and only to the extent that use was permitted when it acquired tax lot 500 and the northern 62 acres of tax lot 700 in 1960 and when it acquired the southern 80 acres of tax lot 700 in 1972. (See the complete recommendation in Section VI of this report.)

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

#### **Comments Received**

On August 17, 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, eight written comments were received in response to the 10-day notice. Some of the comments address whether the claim meets the criteria for relief under ORS 197.352. To the extent that the comments pertain to whether the claim meets the criteria for relief, the department has considered the comments in preparing this report.

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 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 April 18, 2006, for processing under OAR 125, division 145. The claim identifies ORS 197 and 215, OAR 660, Hood River County zoning ordinances and Exclusive Farm Use (EFU) zoning, as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

## **Conclusions**

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

## **V. ANALYSIS OF CLAIM**

### **1. Ownership**

ORS 197.352 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

### **Findings of Fact**

The claimant, Moore Orchards, Inc.,<sup>2</sup> acquired tax lot 500 and the northern 62 acres of tax lot 700 on December 23, 1960, as reflected by a bargain and sale deed included with the claim. The claimant acquired the southern 80 acres of tax lot 700 on March 15, 1972, as reflected by a warranty deed submitted by the claimant. The Hood River County Assessor’s Office confirms the claimant’s current ownership of the subject property.

### **Conclusions**

The claimant, Moore Orchards, Inc., is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of December 23, 1960, and March 15, 1972.

### **2. The Laws That are the Basis for This Claim**

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimant’s use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

### **Findings of Fact**

The claim indicates that the claimant desires to divide tax lot 500 and the northern 62 acres of tax lot 700 into 246 parcels and divide the southern 80 acres of tax lot 700 into 16 five-acre parcels and to develop a dwelling on each parcel. It indicates that the use is not allowed under current land use regulations.<sup>3</sup>

---

<sup>2</sup> Moore Orchards, Inc. is a domestic business corporation registered with the Oregon Secretary of State.

<sup>3</sup> The claim lists numerous state laws as applicable to this claim, but (except for the state land use regulations addressed in the body of this report) does not establish how the laws either apply to the claimant’s 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 laws either do not apply to the claimant’s property or do not restrict the claimant’s desired use of the property with the effect of reducing its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimant’s use of the subject property, based on the information in the claim concerning the claimant’s asserted desired use.

The zoning of the property is based generally on the applicable provisions of state law that require EFU and forest zoning and restrict uses on EFU- and forest-zoned lands.

Tax lot 500 and a portion of tax lot 700 are zoned EFU by Hood River County. The EFU-zoned portion of the property is zoned EFU, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3.<sup>4</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

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

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.)

A portion of tax lot 700 is zoned F-1 by Hood River County. The claim for the F-1-zoned portion of the property is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. This portion of the claimant's property is zoned forest, as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the 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 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.

---

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

The claimant acquired tax lot 500 and the northern 62 acres of tax lot 700 on December 23, 1960, and acquired the southern 80 acres of tax lot 700 on March 15, 1972, all prior to the adoption of statewide planning goals and their implementing statutes and regulations. No zoning applied to the property when the claimant acquired tax lot 500 and the northern 62 acres of tax lot 700 in 1960. At the time the claimant acquired the southern 80 acres of tax lot 700, it was subject to Hood River County's A-1 farm zone. The A-1 zone was a qualified farm zone, which established a five-acre minimum lot size for new parcels and allowed dwellings in conjunction with farm use, subject to ORS 215 (1971 edition).

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established under Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33, were enacted or adopted after the claimant acquired tax lot 500 and the northern 62 acres of tax lot 700 in 1960 and acquired the southern 80 acres of tax lot 700 in 1972, and do not allow the desired division and development of the property. When the claimant acquired the southern 80 acres of tax lot 700 in 1972, it was subject to the applicable provisions of ORS 215 (1971 edition). The claim does not establish whether or to what extent the claimant's desired use of that portion of the property satisfies the requirements of ORS 215 then in effect.

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 claimant has identified. There may be other laws that currently apply to the claimant's use of the subject property, and that may continue to apply to the claimant's 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 claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

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

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

### **Findings of Fact**

The claim includes an estimate of \$25,548,000 as the reduction in the subject property's fair market value due to the regulation that restrict the claimant's desired use of the property. This amount is based on the claimant's land use consultant's analysis of the current value of the subject property compared to its value if divided and developed as desired by the claimant, along with an estimate of the expenses of developing the property for the desired use. Comments on the draft staff report assert that the method the department is using to determine whether state land use regulations have had the effect of reducing the fair market value of the property is contrary to ORS 197.352. The department disagrees, and the comments do not include any evidence (as opposed to argument) that shows that the department's conclusions are incorrect.

## **Conclusions**

As explained in Section V.(1) of this report, the claimant is Moore Orchards, Inc., which acquired tax lot 500 and the northern 62 acres of tax lot 700 on December 23, 1960, and acquired the southern 80 acres of tax lot 700 on March 15, 1972. 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 the claimant acquired the subject property restrict the claimant's desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$25,548,000.

Without an appraisal or other documentation, and without verification of whether or the extent to which the claimant's desired use of the southern 80 acres of tax lot 700 was allowed under the standards in effect when it acquired the property, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines 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 Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33, which Hood River County has implemented through its EFU and F-1 zones. With the exception of provisions of ORS 215 in effect when the claimant acquired the southern 80 acres of tax lot 700 in 1972, all of these land use regulations were enacted or adopted after Moore Orchards, Inc. 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. With the exception of provision of ORS 215 (1971 edition) in effect when the claimant acquired the southern 80 acres of tax lot 700, 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 claimant acquired the subject property. As a result, these laws are not exempt under ORS 197.352(3)(E). Applicable provisions of ORS 215 (1971 edition) in effect when the claimant acquired the southern 80 acres of tax lot 700 are exempt, and will continue to apply to the claimant's use of the subject property.

Other laws in effect when the claimant acquired the subject property are exempt under ORS 197.352(3)(E) and will also continue to apply to the claimant's use of the property. In addition,

the department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. The provisions include fire protection standards for dwellings and for surrounding forest zones. ORS 197.352 (3)(B) specifically exempts regulations “restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . .” To the extent they are applicable to the claimant’s property, the siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to the claimant’s 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 the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the use that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimant should be aware that the less information it has provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to its use of the subject property.

## **VI. FORM OF RELIEF**

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

### **Findings of Fact**

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimant’s desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$25,548,000. 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 the claimant’s desired use of the subject property was allowed under the standards in effect when it 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 Moore Orchards, Inc. to use the subject property for a use permitted at the time it acquired tax lot 500 and the northern 62 acres of tax lot 700 on December 23, 1980, and at the time it acquired the southern 80 acres of tax lot 700 on March 15, 1972.

### **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 Moore Orchards, Inc.'s division of tax lot 500 and the northern 62 acres of tax lot 700 into 246 parcels and division of the southern 80 acres of tax lot 700 into 16 five-acre parcels and to its development of a dwelling on each parcel: applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33. These laws will not apply to the claimant only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired tax lot 500 and the northern 62 acres of tax lot 700 in 1960 and when it acquired the southern 80 acres of tax lot 700 in 1972.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the property for the use described in this report, subject to the standards in effect on December 23, 1960, and March 15, 1972. On March 15, 1972, the southern 80 acres of tax lot 700 were zoned A-1 farm zone and subject to the applicable provisions of ORS 215 (1971 edition) 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 claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.
4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for it to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to its use of the subject property.

## VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on September 22, 2006. Under OAR 125-145-0100(3), the department 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.