

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. M129436
(BALLOT MEASURE 37) OF)	
Gary L. and Gloria I. Fossen, CLAIMANTS)	

Claimants: Gary L. and Gloria I. Fossen (the Claimants)

Property: Township 40S, Range 3W, Section 17BB, Tax lot 800, Jackson 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 denied as the southernmost 0.33-acre portion of the subject property as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 Gary and Gloria Fossen's division of the 8.39-acre subject property into one 4.4-acre parcel and one 3.9-acre parcel and development of a dwelling on the 3.9-acre parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, 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 Gary Fossen acquired the 5.2-acre portion of the subject property on December 15, 1967, when Gloria Fossen acquired the 5.2-acre portion on August 31, 1999, and when the claimants acquired the 2.86-acre portion on October 10, 1997. The department acknowledges that the relief to which the claimants are entitled under ORS

197.352 for the 2.86-acre portion of the subject property, and Gloria Fossen is entitled for the 5.2-acre portion, will not allow the claimants to use these portions for the claimants' desired use.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the 5.2- and 2.86-acre portions of the subject property for the use described in this report, subject to the standards in effect when Gary Fossen acquired the 5.2-acre portion on December 15, 1967, and the 2.86-acre portion on October 10, 1997, and when Gloria Fossen acquired the 5.2-acre portion on August 31, 1999, and the 2.86-acre portion on October 10, 1997. On October 10, 1997, and August 31, 1999, those portions of the property were subject to the applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, 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 5.2- and 2.86-acre portions of the subject property imposed by private parties.

4. Any use of the 5.2- and 2.86-acre portions 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).

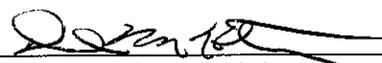
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the 5.2- and 2.86-acre portions of the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that 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 property by the claimants.

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

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:


Lane Shetterly, Director

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division

DLCD
Dated this 22nd day of November, 2006.

Dated this 22nd day of November, 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

November 22, 2006

STATE CLAIM NUMBER: M129436

NAMES OF CLAIMANTS: Gary L. and Gloria I. Fossen

MAILING ADDRESS: 11857 Upper Applegate Road
Jacksonville, Oregon 97530

PROPERTY IDENTIFICATION: Township 40S, Range 3W, Section 17BB
Tax lot 800
Jackson County

DATE RECEIVED BY DAS: June 1, 2006

180-DAY DEADLINE: November 28, 2006

I. SUMMARY OF CLAIM

The claimants, Gary and Gloria Fossen, seek compensation in the amount of \$200,000 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 8.39-acre subject property into one 4.4-acre parcel, on which an existing dwelling is located, and one 3.9-acre parcel and develop a dwelling on the 3.9-acre parcel.¹ The subject property is located at 11857 Upper Applegate Road, near Jacksonville, in Jackson 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 Gary and Gloria Fossen's division of the 8.39-acre subject property into one 4.4-acre parcel and one 3.9-acre parcel and development of a dwelling on the 3.9-acre parcel:

¹ The claimants also express a desire to develop a temporary dwelling and an RV pad and to reconstruct the current driveway on the 4.4-acre parcel. However, the claimants do not provide sufficient information for the department to determine if any state laws may apply to and restrict that portion of the desired use. Without the necessary information to evaluate the use, that portion of the desired use is not addressed further in this claim. In order to present a valid claim for that portion of the desired use, the claimants must describe the use and identify state laws that may apply to and restrict that use with the effect of reducing the property's fair market value with sufficient detail to allow the department to evaluate the claim. To the extent the claimants identify state laws that restrict that portion of the use, the claimants may file a claim for relief based upon those specific state laws.

applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6, 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 Gary Fossen acquired the 5.2-acre portion of the subject property on December 15, 1967, when Gloria Fossen acquired the 5.2-acre portion on August 31, 1999, and when the claimants acquired the 2.86-acre portion on October 10, 1997. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 for the 2.86-acre portion of the subject property, and the relief to which Gloria Fossen is entitled for the 5.2-acre portion, will not allow them to use these portions for the claimants' desired use.

The department has further determined that the claim is not valid as to the southernmost 0.33-acre portion of the subject property because the claimants' desired use of this portion was prohibited under the laws in effect when the claimants acquired it in 1995. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On September 25, 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 June 1, 2006, for processing under OAR 125, division 145. The claim identifies Jackson 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

The subject property, tax lot 800, was originally composed of tax lots 400, 800 and 900, which the claimants acquired as follows:

Date	Party	Documents Included With the Claim	Description
December 15, 1967	Gary Fossen	Warranty Deed (OR 67-11843)	Acquired the southern 5.2 acres of tax lot 800
August 11, 1995	Gary and Gloria Fossen	Quitclaim Deed (OR 95-22399) from the United States of America, acting through the Forest Service, Department of Agriculture	Acquired the southernmost 0.33 acre of tax lot 900
October 10, 1997	Gary and Gloria Fossen	Bargain and Sale Deed (OR 98-02727) from the Estate of Evelyn E. Fossen	Acquired the northern 2.86 acres of tax lot 800
August 31, 1999	Gary Fossen conveys to Gary and Gloria Fossen	Quitclaim Deed (OR 99-45399)	Conveyed the southern 5.2 acres of tax lot 800
November 2, 1999	Gary and Gloria Fossen	Property line adjustment (99-8-PLA)	Adjusted boundary between tax lots 400 and 800

The claimants’ family members, E.H. and Evelyn E. Fossen, acquired the 5.2- and 2.86-acre portions of the subject property on June 14, 1951, as reflected by a warranty deed included with the claim.

The Hood River County Assessor’s Office confirms the claimants’ current ownership of the subject property.

Conclusions

The claimants, Gary and Gloria Fossen, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). Gary Fossen has been owner of the 5.2-acre portion of the subject property since December 15, 1967, the 0.33-acre portion since August 11, 1995, and the 2.86-acre portion since October 10, 1997. Gloria Fossen has been an owner of the 0.33-acre portion of the subject property since August 11, 1995, the 2.86-acre portion since October 10,

1997, and the 5.2-acre portion since August 31, 1999. E.H. and Evelyn E. Fossen are "family members" of the claimants as defined by ORS 197.352(11)(A) and acquired the 5.2- and 2.86-acre portions of the subject property on June 14, 1951.

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 the claimants desire to divide the 8.39-acre subject property into one 4.4-acre parcel and one 3.9-acre parcel and develop a dwelling on the 3.9-acre parcel. It indicates that the desired use is not allowed under the current zoning.

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimants' property is zoned by Jackson County as Woodlot Resource (WR) 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 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 claimants' family first acquired the 5.2- and 2.86-acre portions of the subject property in 1951, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1951.

When the claimants acquired the 0.33-acre portion of the subject property, it was zoned by Jackson County as Forest Resource (FR) and subject to the current lot size and dwelling standards under Goal 4, ORS 215 and OAR 660, division 6, and as described above.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 and provisions applicable to land zoned for forest use in ORS 215 and OAR 660, division 6, were all enacted or adopted after Gary Fossen acquired the 5.2-acre portion of the subject property in 1967 and the claimants' family acquired the 5.2- and 2.86-acre portions in 1951, and do not allow the desired division or development of the subject property. These laws restrict the use of the 5.2- and 2.86-acre portions of the subject property relative to the uses allowed when Gary Fossen and the claimants' family acquired those portions of the property.

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 and provisions applicable to land zoned for forest use in ORS 215 and OAR 660, division 6, were all enacted or adopted before Gary and Gloria Fossen acquired the 0.33-acre portion of the subject property on August 11, 1995. Laws enacted or adopted since the claimants acquired the 0.33-acre portion of the subject property in 1995 do not restrict the claimants' desired use of that portion of the property relative to when the claimants acquired it in 1995.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the 5.2- and 2.86-acre portions of the subject property based on the uses that the claimants have identified. There may be other laws that currently apply to the claimants' use of the 5.2- and 2.86-acre portions 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 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 currently apply to and may continue to 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 \$200,000 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 the claimants' assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Gary and Gloria Fossen. The claimants' family members acquired the 5.2- and 2.86-acre portions of the subject property in 1951; Gary Fossen acquired the 5.2-acre portion in 1967; and Gary and Gloria Fossen acquired the 0.33-acre portion in 1995. The claimants are not due compensation under ORS 197.352 for the 0.33-acre portion of the subject property because no state laws enacted or adopted since the claimants acquired that portion of the property restrict the use of the property relative to the uses allowed in 1995. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the 5.2- and 2.86-acre portions 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 Gary Fossen acquired the 5.2-acre portion of the subject property and the claimants' family acquired the 5.2- and 2.86-acre portions restrict the claimants' desired use of the property. The claimants estimate that the effect of the regulations on the subject property's fair market value is a reduction of \$200,000.

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 5.2- and 2.86-acre portions 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 5.2- and 2.86-acre portions of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

4. Exemptions Under ORS 197.352(3)

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

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, which Jackson County has implemented through its current WR zone. All of these land use regulations were enacted or adopted after Gary Fossen acquired the 5.2-acre portion of the subject property and the claimants' family acquired the 5.2- and 2.86-acre portions. All of these land use regulations were in effect when the claimants acquired the 0.33-acre portion of the subject property in 1995.

Conclusions

Although a conceptual development proposal for the property was included with the claim, 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 residential division and development of the 5.2-acre portion of the subject property were in effect when Gary Fossen acquired that portion on December 15, 1967, or when the claimants' family acquired the 5.2- and 2.86-acre portions on June 14, 1951. All of the state land use regulations that restrict the claimants' desired use of the 0.33-acre portion of the subject property were in effect when the claimants acquired this portion. As a result, these state land use regulations are not exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimants acquired the 5.2- and 2.86-acre portions of the subject property. These regulations are all exempt for the 0.33-acre portion of the subject property.

Laws in effect when Gary Fossen acquired the 5.2-acre portion of the subject property, when the claimants' family acquired the 5.2- and 2.86-acre portions and when the claimants acquired the 0.33-acre portion are exempt under ORS 197.352(3)(E). As a result, the laws will continue to apply to the claimants' use of the property 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, the department finds that the claimants are not entitled to compensation for the 0.33-acre portion of the subject property they acquired in 1995 because the claimants' desired use of that portion of the property was prohibited under the laws in effect when they acquired it. The department further finds that laws enforced by the Commission or the department restrict the claimants' desired use of the 5.2- and 2.86-acre portions 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 \$200,000. 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 to claimants' desired use of the 5.2- and 2.86-acre portions of the subject property was allowed under the standards in effect when the claimants' family acquired those portions. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based have reduced the fair market value of the 5.2- and 2.86-acre portions 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 the claimants to use the 5.2- and 2.86-acre portions of the subject property for a use permitted at the time Gary Fossen acquired the 5.2-acre portion on December 15, 1967, at the time the claimants acquired 2.86-acre portion on October 10, 1997, and at the time Gloria Fossen acquired the 5.2-acre portion on August 31, 1999.

When the claimants acquired the 2.86-acre portion of the subject property and Gloria Fossen acquired an interest in the 5.2-acre portion, both portions were zoned by Jackson County as WR and subject to the current lot size and dwelling standards under Goal 4, ORS 215 and OAR 660, division 6, and as described in Section V.(2) of this report.

In addition to the laws in effect when each of the claimants acquired their present interest in the subject property, 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 may continue to 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 uses 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 the 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, the department concludes that the claimants have not established that they are entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department for the 0.33-acre portion of the subject property. Therefore, the department recommends that this claim be denied as to that portion of the subject property. The department otherwise recommends that the claim be approved as to the 5.2- and 2.86-acre portions of the subject property, 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 Gary and Gloria Fossen's division of the 8.39-acre subject property into one 4.4-acre parcel and one 3.9-acre parcel and development of a dwelling on the 3.9-acre parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, 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 Gary Fossen acquired the 5.2-acre portion of the subject property on December 15, 1967, when Gloria Fossen acquired the 5.2-acre portion on August 31, 1999, and when the claimants acquired the 2.86-acre portion on October 10, 1997. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 for the 2.86-acre portion of the subject property, and Gloria Fossen is entitled for the 5.2-acre portion, will not allow the claimants to use these portions for the claimants' desired use.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the 5.2- and 2.86-acre portions of the subject property for the use described in this report, subject to the standards in effect when Gary Fossen acquired the 5.2-acre portion on December 15, 1967, and the 2.86-acre portion on October 10, 1997, and when Gloria Fossen acquired the 5.2-acre portion on August 31, 1999, and the 2.86-acre portion on October 10, 1997. On October 10, 1997, and August 31, 1999, those portions of the property were subject to the applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, 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 5.2- and 2.86-acre portions of the subject property imposed by private parties.
4. Any use of the 5.2- and 2.86-acre portions 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 5.2- and 2.86-acre portions of 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 property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on November 2, 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. No comments were received.