

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,  
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, AND  
THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR ) FINAL ORDER  
COMPENSATION UNDER ORS 197.352 ) CLAIM NO. M129500  
(BALLOT MEASURE 37) OF )  
Roy A. Lohse, CLAIMANT )

Claimant: Roy A. Lohse (the Claimant)

Property: Township 5S, Range 1W, Section 9B, Tax lot 100, Marion 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 Reports and Recommendation of DLCD (the DLCD Report), and the Department of Transportation (the ODOT Report), attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by the Department of Transportation for the reasons set forth in the ODOT 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:

In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Roy Lohse's commercial development of an RV and mobile home park on the 17.17-acre subject property: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after January 27, 1999. These laws will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on January 27, 1999. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on January 27, 1999. At that time, the property was subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, then in effect, including but not limited to ORS 215.283 (which does not allow the claimant's desired use).

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 him 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 a use of the subject property by the claimant.

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.

This Order is entered by the Department of Transportation as a final order under ORS 197.352 and OAR Chapter 125, division 145.

FOR DLCD AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:

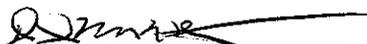
Lane Shetterly, Director



Cora R. Parker, Deputy Director  
DLCD

Dated this 6<sup>th</sup> day of December, 2006.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

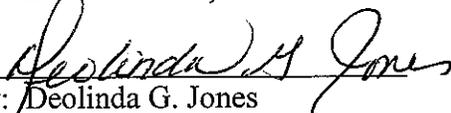


David Hartwig, Administrator  
DAS, State Services Division

Dated this 6<sup>th</sup> day of December, 2006.

FOR THE FOR DEPARTMENT OF  
TRANSPORTATION:

Matthew L. Garrett, Director



By: Deolinda G. Jones  
State Right of Way Manager

Oregon Department of Transportation

Dated this 6<sup>th</sup> day of December, 2006.

#### **NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF**

You are entitled, or may be entitled, to the following judicial remedies:

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."

**BALLOT MEASURE 37 (ORS 197.352)  
CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF TRANSPORTATION**

**Staff Report and Recommendation**

December 6, 2006

**STATE CLAIM NUMBER:** M 129500

**NAME OF CLAIMANT:** Ray A. Lohse

**MAILING ADDRESS:** 2393 N. Locust  
Canby OR 97013

**IDENTIFICATION OF PROPERTY:** 2495 Molalla Rd  
Woodburn Oregon 97071  
(T5S, R1W, Section 9B, Tax Lot 100)

**OTHER CONTACT INFO:** None

**DATE RECEIVED BY DAS:** June 13, 2006

**180-DAY DEADLINE:** December 10, 2006

**I. CLAIM**

See Department of Land Conservation and Development (DLCDD) Staff Report.

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the findings and conclusions set forth below, the Department of Transportation (Department) has determined that the claim is not valid as to state land use regulations that it administers. The claim fails to identify any state land use regulation that restricts the claimant's desired use to have billboards on his property. The claim fails to establish that the Department has enforced state land use regulations that restrict the claimant's use of the property in a manner that reduces the fair market value of the property. As the claim fails to identify any state land use regulation with regard to billboards, the Department is unable to determine whether any of the exemptions under ORS 197.352(3) may apply. Therefore, the claimant has not established entitlement to relief under ORS 197.352(1) as to laws administered by the Department.

### **III. COMMENTS RECEIVED**

See Department of Land Conservation and Development (DLCD) Staff Report.

### **IV. TIMELINESS OF CLAIM**

#### **Requirement**

See Department of Land Conservation and Development (DLCD) Staff Report.

#### **Findings of Fact**

There is no identification in the claim of what rules or statutes have been enforced by the Department since December 2, 2004, or how they restrict the use of the property that the claimant wishes to carry out. The claim asserts an intended use of “billboards commercial and political.” The claim was brought on June 13, 2006, which is within two years of the effective date of the measure (December 2, 2004).

#### **Conclusions**

The claim has been submitted within two years of the effective date of the measure and therefore is 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 findings of the Staff Report of the Department of Land Conservation and Development on this claim regarding ownership are incorporated into this report by this reference.

#### **Conclusions**

The conclusions of the Staff Report of the Department of Land Conservation and Development on this claim regarding ownership are incorporated into this report by this reference.

## **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 “state land use regulation” 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**

Under the Intended Use portion of the claim form, claimant includes the following: “... billboards commercial & political ....” The claim does not identify any statutes or rules that restrict these uses, or any action to enforce state laws regarding billboards on this property.

In order for a claimant to establish an entitlement to relief under ORS 197.352, there must be a showing of at least the following:

- The use of the claimant’s property is restricted by a state “land use regulation”;
- The state agency has taken some action, after December 2, 2004, to enforce the land use regulation;
- The enforcement or enactment of the land use regulation also reduces the fair market value of the property in question; and
- The law is not one that was adopted to protect public health and safety, or that is otherwise exempt under ORS 197.352(3).

Because the claim does not identify any statutes or rules relating to billboards it is impossible to determine what state land use regulations might apply to the property or restrict the claimant’s desired use. Without identification of the state laws that are the basis for the claim, the Department also is unable to determine whether the state laws in question have been enforced.

### **Conclusions**

The claim fails to identify a state land use regulation that has been enforced as to the claimant’s desired use of the property in a manner that restricts the claimant’s use.

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

In order to establish a valid claim, ORS 197.352(1) requires that any laws 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**

Claimant asserts a claim for \$1,000,000. The claim describes the value of the property in its current farm use, and the projected value with a mobile home park or RV facility. No information in the claim concerns an effect on fair market value of a state law relating to billboards. Claimant has not put forth any information on reduction in value based on his desire to place “billboards commercial and political” on the site.

### **Conclusions**

To state a claim under ORS 197.352, claimant must allege some reduction in fair market value of his property caused by a land use regulation that restricts the use of the property. Based on the claim, the Department concludes that there are no land use regulations identified in the claim and enforced by the Department since December 2, 2004, that restrict the use of the subject property or that have the effect of reducing the fair market value.

### **4. Exemptions under ORS 197.352(3)**

ORS 197.352 does not apply to certain land use regulations. The type of land use regulations not subject to a claim for compensation under ORS 197.352 are set forth in section 3 of the statute.

### **Findings of Fact**

ORS 197.352(3)(B) states that the act does not apply to land use regulations enacted to protect public safety. State laws pertaining to billboards may be exempt under this provision of ORS 197.352. However, as the claimant has not identified what state laws the claim is based on, the Department is unable to determine whether the exemption applies. ORS 197.352(3)(C) states that the act does not apply to regulations passed to comply with federal law. State laws pertaining to billboards may be exempt under this provision of ORS 197.352. However, as the claimant has not identified what state laws the claim is based on, the Department is unable to determine whether the exemption applies.

### **Conclusions**

The claim contains no information concerning what state land use regulations apply to or restrict the claimant’s desired use. As a result, the Department is unable to determine whether one or more of the exemptions under ORS 197.352(3) may apply to this claim.

## **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Department has enacted or enforced a law that restricts 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 to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property.

### **Findings of Fact**

Based on the findings and conclusions set forth in this report, the claim fails to identify any state land use regulation that applies to or restricts the claimant's desired use to have billboards on his property. The claim also fails to establish that the Department has enforced state land use regulations that restrict the claimant's use of the property in a manner that reduces the fair market value of the property. As the claim fails to identify any state land use regulation with regard to billboards, the Department is unable to determine whether any of the exemptions under ORS 197.352(3) may apply.

### **Conclusion**

Based on the foregoing findings and conclusions, the claimant has not established entitlement to relief under ORS 197.352(1) as to laws administered by the Department. As a result, the Department recommends that the claim be DENIED with respect to laws administered by the Department.

## **VII. NOTICE OF OPPORTUNITY TO COMMENT**

The department issued its draft staff report on this claim on November 14, 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.

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

December 6, 2006

**STATE CLAIM NUMBER:** M129500

**NAME OF CLAIMANT:** Roy A. Lohse

**MAILING ADDRESS:** 2393 North Locust Street  
Canby, Oregon 97013

**PROPERTY IDENTIFICATION:** Township 5S, Range 1W, Section 9B  
Tax lot 100  
Marion County

**DATE RECEIVED BY DAS:** June 13, 2006

**180-DAY DEADLINE:** December 10, 2006

**I. SUMMARY OF CLAIM**

The claimant, Roy Lohse, seeks compensation in the amount of \$1 million 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 commercial development of an RV and mobile home park on the 17.17-acre subject property. The subject property is located at 2495 Molalla Road, near Woodburn, in Marion 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 Roy Lohse's commercial development of an RV and mobile home park on the 17.17-acre subject property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after January 27, 1999. These laws will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on January 27, 1999. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use the subject property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On October 27, 2006, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, two written comments were received in response to the 10-day notice.

One comment addresses whether the claim meets the criteria for relief under ORS 197.352. This comment contends that the effect of the land use regulation should be calculated as of the date the state land use regulations were imposed, not on the loss of value as would be the case if the regulations were imposed today. The comment has been considered, but no evidence concerning the effect of the enactment or enforcement of state land use regulations has been provided other than that provided by the claimant.

The other comment does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letters in the department's claim file.)

### **IV. TIMELINESS OF CLAIM**

#### **Requirement**

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

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

#### **Findings of Fact**

This claim was submitted to DAS on June 13, 2006, for processing under OAR 125, division 145. The claim identifies Marion County's 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, Roy Lohse, acquired the subject property from the estate of his mother, Carol Lohse, on January 27, 1999, as reflected by a personal representative’s deed included with the claim. R.A. and Carol Lohse acquired the subject property on November 8, 1944, as evidenced by a deed included with the claim. The Marion County Assessor’s Office confirms the claimant’s current ownership of the subject property.

## **Conclusions**

The claimant, Roy Lohse, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of January 27, 1999. R.A. and Carol Lohse are “family members” of Roy Lohse as defined by ORS 197.352(11)(A) and acquired the subject property on November 8, 1944.

### **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’s desired use is commercial development of an RV and mobile home park on the 17.17-acre subject property, and that this use is not allowed under the current zoning.

The claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land. The claimant’s property is zoned by Marion County as EFU as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the

claimant's property is "agricultural land" as defined by Goal 3.<sup>1</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.283, 215.284 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the development of an RV and mobile home park on EFU-zoned land and establish standards for the development of dwellings on that land.

ORS 215.283 sets forth permitted non-farm uses of land zoned EFU, and mobile home parks and RV parks are not allowed by statute. ORS 215.284 establishes standards for 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.)

The claimant's family first acquired the subject property in 1944, prior to the adoption of the statewide planning goals and their implementing statutes and rules. No county zoning applied to the subject property in 1944.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimant's family acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when the claimant's 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."

### **Findings of Fact**

The claim includes an estimate of \$1 million as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the claimant's estimate of the effect of enforcement of land use regulations on the fair market value of the subject property.

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<sup>1</sup> The claimant's property is "agricultural land" because it contains National Resources Conservation Service Class I-IV soils.

## **Conclusions**

As explained in Section V.(1) of this report, the claimant is Roy Lohse whose family members acquired the subject property in 1944. Under ORS 197.352, the claimant is 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 claimant's family acquired the subject property restrict the claimant's desired use of the property. The claimant estimates that the effect of the enforcement of the regulations on the fair market value of the subject property is a reduction of \$1 million.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the claimant's 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 claimant's family acquired the property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Marion County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after the claimant's 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 claimant's family acquired the property on November 8, 1944. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimant's 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 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 \$1 million. 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. 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 not apply all or parts of certain land use regulations to allow Roy Lohse to use the subject property for a use permitted at the time he acquired the property on January 27, 1999.

At the time the claimant acquired an interest in the subject property it was zoned by Marion County as EFU and subject to the current dwelling and use standards under Goal 3, ORS 215.283 and 215.284 and OAR 660, division 33, and as described in Section V.(2) of this report.

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 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 he 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 his 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 Roy Lohse's commercial development of an RV and mobile home park on the 17.17-acre subject property: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after January 27, 1999. These laws will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on January 27, 1999. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use the subject property in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on January

27, 1999. At that time, the property was subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, then in effect, including but not limited to ORS 215.283 (which does not allow the claimant's desired use).

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 him 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 a use of the subject property by the claimant.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on November 14, 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.