

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 A
COMPENSATION UNDER ORS 197.352) CLAIM NO. M129503
(BALLOT MEASURE 37) OF)
Helen E. Ems and Vicki E. Smith, CLAIMANTS)

Claimants: Helen E. Ems and Vicki E. Smith (the Claimants)

Property: Township 5S, Range 2E, Section 20, Tax lots 100 and 1200, Clackamas County
(the Property)

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

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

ORDER

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Helen Ems and Vicki Smith's division of the 63.1-acre property into 5-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after these claimants each acquired the subject property. These land use regulations will not apply to these claimants only to the extent necessary to allow Helen Ems to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property in 1971, and to allow Vicki Smith to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property in 2000. The department acknowledges that the relief to which Vicki Smith is entitled under ORS 197.352 will not allow her 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 Helen Ems and Vicki Smith to use the subject property for the use described in this report, subject to the standards in effect when Helen Ems acquired the property on March 29, 1971, and when Vicki Smith

acquired the property on June 26, 2000. On June 26, 2000, the property was subject to the applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Helen Ems and Vicki Smith first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by Helen Ems and Vicki Smith 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 Helen Ems and Vicki Smith to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves Helen Ems and Vicki Smith 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 Helen Ems and Vicki Smith.

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

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


Cora R. Parker, Deputy Director
DLCD
Dated this 6th day of December, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 6th day of December, 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."

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 B
COMPENSATION UNDER ORS 197.352) CLAIM NO. M129503
(BALLOT MEASURE 37) OF)
Gary E. Ems and Robert E. Ems, CLAIMANTS)

Claimant(s): Gary E. Ems and Robert E. Ems (the Claimants)

Property: Township 5S, Range 2E, Section 20, Tax lots 100 and 1200
Clackamas 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 to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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

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


Cora R. Parker, Deputy Director
DLCD
Dated this 6th day of December, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
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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)

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: M129503

NAMES OF CLAIMANTS: Helen E. Ems
Gary E. Ems
Robert E. Ems
Vicki E. Smith

MAILING ADDRESS: Helen E. Ems
633 E. Main Street
Molalla, Oregon 97308

Gary E. Ems
12996 S. Wilderness Way
Molalla, Oregon 97308

Robert E. Ems
3829 Fairhaven Drive
West Linn, Oregon 97068

Vicki E. Smith
PO Box 140
Molalla, Oregon 97308

PROPERTY IDENTIFICATION: Township 5S, Range 2E, Section 20
Tax lots 100 and 1200
Clackamas County

DATE RECEIVED BY DAS: June 13, 2006

180-DAY DEADLINE: December 10, 2006

I. SUMMARY OF CLAIM

The claimants, Helen, Gary and Robert Ems and Vicki Smith, seek compensation in the amount of \$600,000 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 63.1-acre subject property into 5-acre parcels and to develop a dwelling on each parcel. The subject property is located at the geographic coordinates listed above, near Molalla, in Clackamas 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 Helen Ems and Vicki Smith's division of the 63.1-acre subject property into 5-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after these claimants each acquired the subject property. These land use regulations will not apply to these 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 Helen Ems acquired the property on March 29, 1971, and only to the extent that use was permitted when Vicki Smith acquired the property on June 26, 2000. The department acknowledges that the relief to which Vicki Smith is entitled under ORS 197.352 will not allow her to use the subject property in the manner set forth in the claim.

The department has further determined that this claim is not valid as to Gary and Robert Ems because these claimants have not established their present ownership of the subject property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On September 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.

The comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the 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 June 13, 2006, for processing under OAR 125, division 145. The claim identifies Clackamas County's 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

Claimant Helen Ems acquired the subject property on March 29, 1971, with her late husband, Victor Ems, as reflected by a contract to purchase and a fulfillment warranty deed included with the claim.¹ Following Victor Ems' death², Helen Ems' children, Vicki Smith and Gary and Robert Ems, each acquired a one-sixth interest in the subject property on June 26, 2000, as evidenced by a death certificate and a personal representative deed included with the claim. On December 27, 2002, Gary Ems conveyed his interest in the subject property to Vicki Smith; and on January 6, 2003, Robert Ems conveyed his interest in the property to Vicki Smith, as evidence by statutory warranty deeds included with the claim. On December 19, 2002, Helen Ems transferred her remaining interest in the property to the Helen E. Ems Living Trust, a revocable living trust, with herself as trustee, as reflected by a statutory warranty deed included with the claim.³ On November 13, 2003, Vicki Smith conveyed her interest in the subject property to the

¹ The state claim form asserts an acquisition date for Helen Ems as April 10, 1975. However, Clackamas County's staff report for a county claim filed under ORS 197.352 for the same property indicates that the claimant acquired the subject property on March 29, 1971, by contract. Clackamas County has provided a copy of that contract, which establishes that Helen Ems acquired the property on March 29, 1971. This report relies on the information in the county report.

² Vicki Smith and Robert and Gary Ems assert an acquisition date of April 16, 2002, based on a personal representative deed included with the claim. Under ORS 114.215(1), title to property transfers to heirs and devisees upon the death of a decedent. Therefore, Vicki Smith and Robert and Gary Ems acquired the subject property on June 26, 2000, the date of Victor Ems' death.

³ Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

Vicki E. Smith Trust, a revocable living trust, with herself as trustee, as reflected by a quitclaim deed included with the claim. The Clackamas County Assessor's Office confirms Helen Ems and Vicki Smith's current ownership of the subject property.

Conclusions

Claimants Helen Ems and Vicki Smith are "owners" of the subject property as that term is defined by ORS 197.352(11)(C). Helen Ems has been an owner since March 29, 1971. Vicki Smith has been an owner since June 26, 2000. Helen Ems is a "family member" of Vicki Smith as that term is defined by ORS 197.352(11)(A). Robert and Gary Ems are not "owners" of the subject property as that term is defined by ORS 197.352(11)(C)

2. The Laws That are the Basis for This Claim

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

Findings of Fact

The claim indicates that the claimants desire to divide the 63.1-acre subject property into 5-acre parcels and to develop a dwelling on each parcel and that the desired use is not allowed under current land use regulations.

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimants' property is zoned EFU by Clackamas County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.⁴ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 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 the development of dwellings on existing or any proposed parcel 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

⁴ The claimants' property is "agricultural land" because it contains National Resources Conservation Service Class I-IV soils.

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 became effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Helen Ems acquired the subject property in 1971, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1971.

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 enacted or adopted after Helen Ems acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when Helen Ems acquired the property.

As explained in Section V.(1), claimants Robert and Gary Ems are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or department restrict these claimants’ use of the subject property with the effect of reducing the fair market value.

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. There may be other laws that currently apply to Helen Ems and Vicki Smith’s use of the subject property, and that may continue to apply to these 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 Helen Ems or Vicki Smith 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 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 \$600,000 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 claimants’ assessment of the property’s value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Helen Ems who acquired the subject property in 1971, her daughter Vicki Smith and her sons Gary and Robert Ems. Gary and Robert Ems are not owners of the subject property and therefore, are not entitled to compensation under ORS 197.352. Under ORS 197.352, claimants Helen Ems and Vicki Smith are due compensation for land use regulations that restrict the use of the property and have the

effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since Helen Ems acquired the subject property restrict these claimants' desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$600,000. Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since Helen Ems acquired the subject 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, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Clackamas County has implemented through its current EFU zone. All of these regulations were enacted or adopted after Helen Ems acquired the subject property in 1971.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on division and development of the claimants' property were in effect when Helen Ems acquired the subject property in 1971. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when Helen Ems acquired the subject property are exempt under ORS 197.352(3)(E) and will continue to apply to her use of the property. There may be other laws that continue to apply to Helen Ems' 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 Helen Ems 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).

As explained in Section V.(1) of this report, Gary and Robert Ems are not owners of the subject property. Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to them.

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 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, the department has determined that Gary and Robert Ems are not entitled to relief under ORS 197.352 because they have not established their ownership of the subject property. The department has further determined that laws enforced by the Commission or the department restrict Helen Ems and Vicki Smith'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 \$600,000. 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 Helen Ems and Vicki Smith's desired use of the subject property was allowed under the standards in effect when Helen Ems 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 Helen Ems to use the subject property for a use permitted at the time she acquired the property on March 29, 1971, and to allow Vicki Smith to use the property for a use permitted at the time she acquired the property on June 26, 2000.

At the time Vicki Smith acquired an interest in the subject property, it was zoned EFU by Clackamas County and subject to the current lot size and dwelling standards under Goal 3, ORS 215 and OAR 660, division 33, and as described in Section V.(2) of this report.

Conclusions

Based on the record, the department has determined that Gary and Robert Ems are not entitled to relief under ORS 197.352 as a result of land use regulations enforced by The Commission or the

department because they are not present owners of the subject property. Therefore, the department recommends the claim be denied as to claimants Gary and Robert Ems. The department further recommends that the claim be approved as to claimants Helen Ems and Vicki Smith, 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 Helen Ems and Vicki Smith's division of the 63.1-acre property into 5-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after these claimants each acquired the subject property. These land use regulations will not apply to these claimants only to the extent necessary to allow Helen Ems to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property in 1971, and to allow Vicki Smith to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property in 2000. The department acknowledges that the relief to which Vicki Smith is entitled under ORS 197.352 will not allow her 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 Helen Ems and Vicki Smith to use the subject property for the use described in this report, subject to the standards in effect when Helen Ems acquired the property on March 29, 1971, and when Vicki Smith acquired the property on June 26, 2000. On June 26, 2000, the property was subject to the applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Helen Ems and Vicki Smith first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.
4. Any use of the subject property by Helen Ems and Vicki Smith 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 Helen Ems and Vicki Smith to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves Helen Ems and Vicki Smith 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 Helen Ems and Vicki Smith.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on November 13, 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation