

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. M129518
(BALLOT MEASURE 37) OF)	
Kathryn E. Reubendale, CLAIMANT)	

Claimant: Kathryn E. Reubendale (the Claimant)

Property: Township 45S, Range 1W, Section 12, 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 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 Kathryn Reubendale's division of the 70-acre subject property into 12 parcels or to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after November 29, 2001. These laws will not apply to Kathryn Reubendale only to the extent necessary to allow her 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 on November 29, 2001. The department acknowledges that the relief to which Kathryn Reubendale 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 Kathryn Reubendale to use the subject property for the use described in this report, subject to the standards in effect on November 29, 2001. At that time, the property was subject to 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 Kathryn Reubendale 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 Kathryn Reubendale 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 Kathryn Reubendale to use the subject property, it may be necessary for her 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 Kathryn Reubendale 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 her use of the subject property.

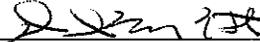
This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 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 7th day of December, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 7th 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. M129518
(BALLOT MEASURE 37) OF)
Joseph M. Reubendale, Ralph Reubendale,)
Robert W. Reubendale Jr. and Diane Wolf, CLAIMANTS)

Claimant(s): Joseph M. Reubendale, Ralph Reubendale, Robert W. Reubendale Jr. and
Diane Wolf (the Claimants)

Property: Township 45S, Range 1W, Section 12, Tax lot 100, Marion 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

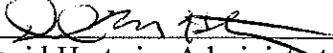
The Claim is denied as to laws administered by DLCD and the Land Conservation and
Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 7th day of December, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 7th day of December, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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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 7, 2006

STATE CLAIM NUMBER: M129518

NAMES OF CLAIMANTS: Kathryn E. Reubendale
Joseph M. Reubendale
Ralph Reubendale
Robert W. Reubendale Jr.
Diane Wolf

MAILING ADDRESS: 9124 216th Street SW
Edmonds, Washington 98026

PROPERTY IDENTIFICATION: Township 45S, Range 1W, Section 12
Tax lot 100
Marion County

OTHER CONTACT INFORMATION: Caroline E.K. MacLaren
805 SW Broadway, Ste. 1900
Portland, Oregon 97205

OTHER INTEREST IN PROPERTY: Doug Wells (Lessee)
22256 Airport Rd. NE
Aurora, Oregon 97002

DATE RECEIVED BY DAS: June 15, 2006

180-DAY DEADLINE: December 12, 2006

I. SUMMARY OF CLAIM

The claimants, Kathryn, Joseph and Ralph Reubendale, Robert Reubendale Jr. and Diane Wolf, seek compensation in the amount of \$2,048,654 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 70-acre subject property into 12 parcels and to develop a dwelling on each parcel. The subject property is located at 22256 Airport Road NE, near Aurora, 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 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 Kathryn Reubendale's division of the 70-acre subject property into 12 parcels and to her 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 November 29, 2001. These laws will not apply to Kathryn Reubendale only to the extent necessary to allow her 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 on November 29, 2001. The department acknowledges that the relief to which Kathryn Reubendale 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 Joseph and Ralph Reubendale, Robert Reubendale Jr. and Diane Wolf because these claimants have not established their ownership of the subject property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 9, 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 15, 2006, for processing under OAR 125, division 145. The claim identifies provisions of ORS 197 and 215, OAR 660 and Goals 4 (Forest Lands), 11 (Public Facilities and Services) and 14 (Urbanization) 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 claimants’ parents, Robert Reubendale Sr. and Ettamarie Reubendale, acquired the subject property on April 14, 1965, as reflected by a deed included with the claim. On November 29, 2001, the property was transferred to the Reubendale Revocable Living Trust, with claimant Kathryn Reubendale as successor trustee, as reflected by the deed and trust amendment included with the claim. The Marion County Assessor’s Office confirms Kathryn Reubendale’s current ownership of the subject property. Claimants Robert Reubendale Jr., Joseph and Ralph Reubendale and Diane Wolf are contingent beneficiaries of the trust and have no present ownership interest in the subject property.¹

Conclusions

Claimant Kathryn Reubendale is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of November 29, 2001. Robert Reubendale Sr. and Ettamarie Reubendale are “family members” of the claimants, as defined by ORS 197.352(11)(A), and acquired the subject property on April 14, 1965. Claimants Robert Reubendale Jr., Joseph and Ralph Reubendale and Diane Wolf have not established that they are “owners” of the subject property as that term is defined in 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.

¹In response to the draft staff report, the claimants’ attorney submitted a comment, asserting that Robert Reubendale Jr., Joseph and Ralph Reubendale and Diana Wolf are owners of the property as of the date of Ettamarie Reubendale’s death on April 25, 2002. The basis of that argument is that, under the terms of the Trust, of which property is a current asset, each of Ettamarie Reubendale’s children are named beneficiaries and thus each has a “beneficial interest and equitable title” to the property. The trust assets have not yet been distributed. Each of these children continues to be a contingent beneficiary. None of them has a present ownership interest in the subject property that includes the legal right to carry out the claimants’ desired use.

Findings of Fact

The claim indicates that the claimants desire to divide the 70-acre subject property into 12 parcels and to develop a dwelling on each parcel. It indicates the desired use is not allowed under current land use regulations.²

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 subject property is zoned EFU by Marion County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3.³ 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 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 claimants' family acquired the subject property in 1965, prior to the adoption of the statewide planning goals and their implementing statutes and rules. No county zoning applied to the subject property in 1965.

² The claimants summarily cite numerous state land use laws as applicable to this claim, but do not establish how the laws either apply to the claimants' desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimants' property or do not restrict the use of the claimants' property in a manner that reduces its fair market value. In response to the draft staff report, the claimants' attorney asserts that the claimants are entitled to waiver of laws that do not presently apply to the subject property but that could theoretically be apply at some date in the future. The language of ORS 197.352 does not support such an interpretation. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' use of the subject property, based on the claimants' description of their desired use.

³ The subject property is "agricultural land" because it contains National Resources Conservation Service Class I-IV soils.

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 claimants' family acquired the subject property. These laws restrict Kathryn Reubendale's use of the subject property relative to the uses allowed when the claimants' family acquired the property.

As explained in Section V.(1), claimants Robert Reubendale Jr., Joseph and Ralph Reubendale and Diane Wolf are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict their use of private real property in a manner that reduces the fair market value of 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 regulations (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

Findings of Fact

The claim includes an estimate of \$2,048,654 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on a comparative market analysis included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are Kathryn, Joseph and Ralph Reubendale, Robert Reubendale Jr. and Diane Wolf, whose family members acquired the subject property in 1965. Claimants Robert Reubendale Jr., Joseph and Ralph Reubendale and Diane Wolf have not established their ownership of the subject property; therefore, no laws restrict these claimants' use of the subject property in a manner that reduces the fair market value of the subject property. Under ORS 197.352, Kathryn Reubendale 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 claimants' family acquired the subject property restrict Kathryn Reubendale's desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$2,048,654.

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 claimants' 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 claimants' 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 claimants' 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 claimants' family acquired the property on April 14, 1965. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimants' 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.

As explained in Section V.(1) of this report, claimants Robert Reubendale Jr., Joseph and Ralph Reubendale and Diane Wolf are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to these claimants.

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 record, the department finds that the claim is not valid as to Robert Reubendale Jr., Joseph and Ralph Reubendale and Diane Wolf because these claimants are not owners of the subject property. The department finds laws enforced by the Commission or the department restrict Kathryn Reubendale'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 \$2,048,654. 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 Kathryn Reubendale's desired use of the subject property was allowed under the standards in effect when her family acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Kathryn Reubendale to use the subject property for a use permitted at the time she acquired the property on November 29, 2001.

At the time Kathryn Reubendale acquired an interest in the subject property, it was zoned EFU by Marion 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.

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 claimant Kathryn Reubendale's use of the subject property.

Conclusions

Based on the record before the department, claimants Robert Reubendale Jr., Joseph and Ralph Reubendale and Diane Wolf 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 because they are not present owners of the subject property. Therefore, the department recommends that this claim be denied as to these claimants.

The department further recommends that the claim be otherwise approved for Kathryn Reubendale, 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 Kathryn Reubendale's division of the 70-acre subject property into 12 parcels or to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after November 29, 2001. These laws will not apply to Kathryn Reubendale only to the extent necessary to allow her 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 on November 29, 2001. The department acknowledges that the relief to which Kathryn Reubendale 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 Kathryn Reubendale to use the subject property for the use described in this report, subject to the standards in effect

on November 29, 2001. At that time, the property was subject to 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 Kathryn Reubendale 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 Kathryn Reubendale 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 Kathryn Reubendale to use the subject property, it may be necessary for her 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 Kathryn Reubendale 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 her use of the subject property.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on November 16, 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.