

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. M129551
(BALLOT MEASURE 37) OF)	
Florence Gross, CLAIMANT)	

Claimant: Florence Gross (the Claimant)

Property: Township 8S, Range 6W, Section 16: tax lots 400, 501, 600 and 700
Polk 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 Florence Gross' division of the 66.49-acre portion of the property (tax lots 400, 501, 600 and 700) into one-acre parcels and to her development of a dwelling on each parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33. These laws will not apply to the claimant only to the extent necessary to allow her to use tax lots 400, 501, 600 and 700 for the use described in this report, and only to the extent that use was permitted when she acquired tax lot 600 on October 1, 1946; tax lot 400 on October 2, 1946; tax lot 700 on August 27, 1956; and tax lot 501 on August 31, 1970.
2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lots 400, 501, 600 and 700 for the use described in this report, subject to the standards in effect on October 1 and 2, 1946, August 27, 1956, and August 31, 1970.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lots 400, 501, 600 and 700 may not be used without a

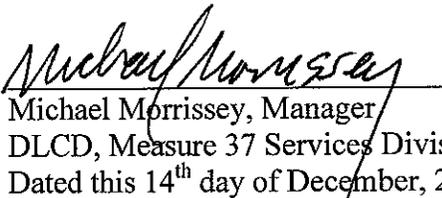
permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, 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 tax lots 400, 501, 600 and 700 imposed by private parties.

4. Any use of tax lots 400, 501, 600 and 700 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).

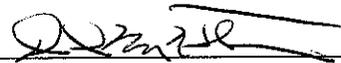
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use tax lots 400, 501, 600 and 700, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves 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 tax lots 400, 501, 600 and 700 by the claimant.

This Order is entered by the Manager for the Measure 37 Services Division 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


Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 14th day of December, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 14th 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. M129551
(BALLOT MEASURE 37) OF)
Florence Gross, CLAIMANT)

Claimant: Florence Gross (the Claimant)

Property: Township 8S, Range 6W Section 16CC, Tax lot 100
Township 8S, Range 6W, Section 16CD, Tax lot 1100
Polk 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

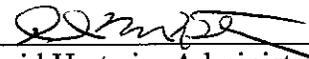
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Manager for the Measure 37 Services Division 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

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 14th day of December, 2006.


David Hartwig, Administrator
DAS, State Services Division
Dated this 14th 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)

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

December 14, 2006

STATE CLAIM NUMBER: M129551

NAME OF CLAIMANT: Florence Gross

MAILING ADDRESS: PO Box 43
Falls City, Oregon 97344

PROPERTY IDENTIFICATION: Township 8S, Range 6W
Section 16: tax lots 400, 501, 600 and 700
Section 16CC: tax lot 100
Section 16CD: tax lot 1100
Polk County

OTHER CONTACT INFORMATION: Stephen Mannenbach
PO Box 220
Dallas, Oregon 97338

DATE RECEIVED BY DAS: June 20, 2006

180-DAY DEADLINE: December 17, 2006

I. SUMMARY OF CLAIM

The claimant, Florence Gross, seeks compensation in the amount of \$1,350,800 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the 67.54-acre subject property into one-acre parcels and to develop a dwelling on each parcel.¹ The subject property is located at geographic coordinates listed above, near Falls City, in Polk 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

¹ The subject property includes six tax lots. Tax lot 100 consists of 0.58 acre; tax lot 400 consists of 20.00 acres; tax lot 501 consists of 13.20 acres; tax lot 600 consists of 16.58 acres; tax lot 700 consists of 16.71 acres; and tax lot 1100 consists of 0.47 acre.

not apply to Florence Gross' division of the 66.49-acre portion of the subject property (tax lots 400, 501, 600 and 700) into one-acre parcels and to her development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33. These laws will not apply to the claimant only to the extent necessary to allow her to use tax lots 400, 501, 600 and 700 for the use described in this report, and only to the extent that use was permitted when she acquired tax lot 600 on October 1, 1946; tax lot 400 on October 2, 1946; tax lot 700 on August 27, 1956; and tax lot 501 on August 31, 1970.

The department has further determined that this claim is not valid as to tax lots 100 and 1100 because neither the Commission nor the department has enforced laws that restrict the claimant's use of these tax lots. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 3, 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 20, 2006, for processing under OAR 125, division 145. The claim identifies Polk County's zoning ordinances as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

The claimant, Florence Gross, acquired each of the tax lots that makes up the subject property as follows:

<u>Tax Lot(s):</u>	<u>Date of Acquisition:</u>	<u>Document:</u>
600	October 1, 1946	Warranty Deed
400	October 2, 1946	Warranty Deed
700 and 1100	August 27, 1956	Warranty Deed
100	February 25, 1964	Quitclaim Deed
501	August 31, 1970	Warranty Deed

The Polk County Assessor’s Office confirms the claimant’s current ownership of the subject property.

Conclusions

The claimant, Florence Gross, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of October 1, 1946, for tax lot 600; as of October 2, 1946, for tax lot 400; as of August 27, 1956, for tax lots 700 and 1100; as of February 25, 1964, for tax lot 100; and as of August 31, 1970, for tax lot 501.

2. The Laws That are the Basis for This Claim

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

Findings of Fact

The claim indicates that the claimant desires to divide the 67.54-acre subject property into one-acre parcels and to develop a dwelling on each parcel, and that the current zoning prohibits the desired use.

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. However, tax lots 100 and 1100 are not subject to EFU zoning. Tax lots 100 and 1100 are currently zoned Residential by the City of Falls City and are within Falls City’s Urban Growth Boundary (UGB).

In general, the zoning of a particular property within a UGB is determined by the city or county with land use jurisdiction over the property. In some circumstances, the Commission's rules or state statutes may apply to a local government decision regarding zoning, but usually, within UGB, state laws require or encourage a higher intensity of development rather than restrict the use of real property. In this case, the claimant has not alleged how a specific state land use regulation restricts the use of tax lots 100 and 1100 with the effect of reducing their fair market value.

Tax lots 400, 501, 600 and 700 are zoned EFU by Polk County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because these tax lots are "agricultural land" as defined by Goal 3.² 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 development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

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

The claimant acquired the subject property, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. However, based on the information in the claim, the department has not identified any state laws that restrict the claimant's use of tax lots 100 and 1100.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimant acquired tax lots 400 and 600 in 1946, tax lot 700 in 1956 and tax lot

² Tax lots 400, 501, 600 and 700 are "agricultural land" because they contain Natural Resources Conservation Service Class I-IV soils.

501 in 1970 and do not allow the desired division or residential development of these tax lots. These laws restrict the use of the subject property relative to the uses allowed when the claimant acquired the tax lots.

The claim does not establish any state laws that currently restrict the use of tax lots 100 and 1100. Because these tax lots are located within the City of Fall City's UGB, neither the Commission nor the department enforces laws that require specific zoning of these portions of the subject property. Based on the record before the department, neither the Commission nor the department enforces any laws that restrict the use of tax lots 100 and 1100.

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. There may be other laws that currently apply to the claimant's use of the subject property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use 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 \$1,350,800 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 assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimant is Florence Gross who acquired tax lot 600 on October 1, 1946; tax lot 400 on October 2, 1946; tax lots 700 and 1100 on August 27, 1956; tax lot 100 on February 25, 1964; and tax lot 501 on August 31, 1970. As explained in Section V.(2) of this report, the claimant has not established that any state land use regulations restrict the use of tax lots 100 and 1100 with the effect of reducing their fair market value. Accordingly, the claimant has not established her entitlement to compensation for tax lots 100 and 1100.

Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of tax lots 400, 501, 600 and 700 and have the effect of reducing their fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant acquired tax lots 400, 501, 600 and 700 restrict the claimant's desired use of these tax lots. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$1,350,800.

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 tax lots 400, 501, 600 and 700. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of these tax lots has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

4. Exemptions Under ORS 197.352(3)

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

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, which Polk County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after the claimant acquired the subject property.

Conclusions

Without a specific development proposal, 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 tax lots 400, 501, 600 and 700 were in effect when the claimant acquired the subject property. As a result, these laws are not exempt under ORS 197.352(3)(E). However, as explained in Section V.(2) of this report, the claimant has not established that any state land use regulations restrict the use of tax lots 100 and 1100. Accordingly, the issue of whether any laws are exempt under ORS 197.352(3) with regard to tax lots 100 and 1100 is not relevant.

Laws in effect when the claimant acquired the subject property are exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's use of the property. There may be other laws that continue to apply to the claimant's use of tax lots 400, 501, 600 and 700 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 tax lots 400, 501, 600 and 700 until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the 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 she 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 her use of tax lots 400, 501, 600 and 700.

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 laws that restrict the use of the subject 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 subject 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 do not restrict the claimant's desired use of tax lots 100 and 1100 because these tax lots are located within the City of Falls City's UGB. The department further finds laws enforced by the Commission or the department restrict the claimant's desired use of tax lots 400, 501, 600 and 700. 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 \$1,350,800. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimant's desired use of tax lots 400, 501, 600 and 700 was allowed under the standards in effect when she acquired them. 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 tax lots 400, 501, 600 and 700 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 Florence Gross to use tax lots 400, 501, 600 and 700 for a use permitted at the time she acquired tax lot 600 on October 1, 1946; tax lot 400 on October 2, 1946; tax lot 700 on August 27, 1956; and tax lot 501 on August 31, 1970.

Conclusions

Based on the record before the department, the claimant has not established that she is entitled to relief under ORS 197.352(1) for tax lots 100 and 1100, as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that this claim be denied as to tax lots 100 and 1100. The department otherwise 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 Florence Gross' division of the 66.49-acre portion of the property (tax lots 400, 501, 600 and 700) into one-acre parcels and to her development of a dwelling on each parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33. These laws will not apply to the claimant only to the extent necessary to allow her to use tax lots 400, 501, 600 and 700 for

the use described in this report, and only to the extent that use was permitted when she acquired tax lot 600 on October 1, 1946; tax lot 400 on October 2, 1946; tax lot 700 on August 27, 1956; and tax lot 501 on August 31, 1970.

2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lots 400, 501, 600 and 700 for the use described in this report, subject to the standards in effect on October 1 and 2, 1946, August 27, 1956, and August 31, 1970.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lots 400, 501, 600 and 700 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 tax lots 400, 501, 600 and 700 imposed by private parties.

4. Any use of tax lots 400, 501, 600 and 700 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 tax lots 400, 501, 600 and 700, 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 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 tax lots 400, 501, 600 and 700 by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on November 21, 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.