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 COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Larry Fleshman, CLAIMANT	))))	AMENDED FINAL ORDER CLAIM NO. M129330

Claimant: Larry Fleshman (the Claimant)

Property: Township 3S, Range 45E, Section 11, Tax lots 3700 and 3800
Wallowa 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 Larry Fleshman's division of the 232.13-acre subject property into 16 parcels (one 40-acre, seven 20-acre, one 15-acre, two 10-acre and five 5-acre) and to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after he acquired each of the subject tax lots. These laws will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 3800 and the southern portion of tax lot 3700 on March 22, 1971 and the northern portion of tax lot 3700 on October 17, 1974.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on March 22, 1971, for tax lot 3800 and the southern portion of tax lot 3700 and on October 17, 1974, for the northern portion of tax lot 3700. On October 17, 1974, the property was subject to the

applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition).

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

4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for him to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.

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

FOR DLCD AND THE LAND CONSERVATION AND DEVELOPMENT COMMISSION:

Lane Shetterly, Director
DLCD
Dated this 13th day of February, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 13th day of February, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.

2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Amended Final Staff Report and Recommendation

February 13, 2007

STATE CLAIM NUMBER:	M129330
NAME OF CLAIMANT:	Larry Fleshman
MAILING ADDRESS:	62005 Liberty Road Joseph, Oregon 97846
PROPERTY IDENTIFICATION:	Township 3S, Range 45E, Section 11 Tax lots 3700 and 3800 Wallowa County
DATE RECEIVED BY DAS:	May 15, 2006
180-DAY DEADLINE:	November 11, 2006

I. SUMMARY OF CLAIM

The claimant, Larry Fleshman, seeks compensation in the amount of $1,776,972 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 232.13-acre property into 16 parcels and to develop a dwelling on each resulting undeveloped parcel.[1] The subject property is located on Liberty Road and Fort Road, near Joseph, in Wallowa County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced

[1] The subject property includes two tax lots. Tax lot 3700 consists of 153.73 acres, and tax lot 3800 consists of 78.40 acres. The claimant desires one 20-acre parcel on which an existing dwelling is located, one 40-acre parcel, seven 20-acre parcels, one 15-acre parcel, two 10-acre parcels and five 5-acre parcels. The claim also indicates that the claimant desires to transfer the property for development. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. Whether, or under what circumstances, a subsequent owner may use the property for a particular use is beyond the scope of this order, but may depend on whether that use is first established by the current owner. The Oregon Department of Justice has advised the department that "[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost." If the claimant has questions about the transfer of any rights authorized by this order, the claimant should confer with an attorney.

by the Land Conservation and Development Commission (the Commission) or the department not apply to Larry Fleshman's division of the 232.13-acre subject property into 16 parcels (one 40-acre, seven 20-acre, one 15-acre, two 10-acre and five 5-acre) and to his development of a dwelling on each undeveloped parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after he acquired each of the subject tax lots. These laws will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 3800 and the southern portion of tax lot 3700 on March 22, 1971, and the northern portion of tax lot 3700 on October 17, 1974. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On September 18, 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 May 15, 2006, for processing under OAR 125, division 145. The claim identifies the county's Exclusive Farm Use (EFU) zone and various county 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, Larry Fleshman, acquired the northern portion of tax lot 3700 from his mother, Mildred M. Fleshman, on October 17, 1974, as reflected by a verification of Oregon vital records facts from the Department of Human Services and a September 16, 1975, decree of final distribution of the Estate of Mildred M. Fleshman. Mildred Fleshman acquired tax lot 3700 on October 27, 1945, as reflected by a deed in response to the draft staff report. Larry Fleshman acquired tax lot 3800 (which includes what is now the southern portion of tax lot 3700) on March 22, 1971, as reflected by a contract provided by the claimant in response to the draft staff report, and a fulfillment deed provided with the claim.[2] The Wallowa County Assessor's Office confirms the claimant's current ownership of the subject property.

Conclusions

The claimant, Larry Fleshman, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of March 22, 1971, for tax lot 3800 and the southern portion of tax lot 3700 and as of October 17, 1974, for the northern portion tax lot 3700.

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 232.13-acre subject property into 16 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 EFU zoning and restrict uses on EFU-zoned land. The claimant's property is zoned EFU by Wallowa County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because

[2] Subsequent to the issuance of the final report, the claimant provided additional documentation to confirm that what was formerly known as the northern portion of tax lot 3800 became the southern portion of tax lot 3700 through a lot line adjustment on January 31, 1997.

the claimant's property is "agricultural land" as defined by Goal 3.[3] Goal 3 became effective on January 25, 1975, and required that agricultural land 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 that is designated rangeland into parcels less than 160 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780(1)(b) establishes a 160-acre minimum size for the creation of new lots or parcels in EFU zones that are designated rangeland, 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 claimant acquired tax lot 3800 and the southern portion of tax lot 3700 on March 22, 1971, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

The claimant acquired the northern portion of tax lot 3700 on October 17, 1974, after the adoption of Senate Bill 100 (Chapter 80, Oregon Laws 1973) effective on October 5, 1973, but before the adoption of the statewide planning goals, effective on January 25, 1975. At that time, the property was not zoned by Wallowa County.

During the period between October 5, 1973, and January 25, 1975, ORS 197.175(1) and 197.280 (1973 editions) required, in addition to any local plan or zoning provisions, that cities and counties exercise their planning responsibilities in accordance with the interim land use planning goals set forth in ORS 215.515 (1973 edition). *Petersen v. Klamath Falls*, 279 Or 249 (1977); *see also*, *Meeker v. Board of Comm'rs*, 287 Or 665 (1979) (review of a subdivision is an exercise of planning responsibilities requiring application of the goals); *State Housing Council v. Lake Oswego*, 48 Or App. 525 (1981) (noting that while "[l]and use planning responsibility is not defined in ORS ch 197, the Supreme Court has interpreted that term as including annexation approvals, *subdivision approvals* [emphasis added] and partition approvals") citing *Petersen*, *Meeker* and *Alexanderson v. Polk County*, 285 Or 427 (1980). The claimant's desired use includes subdivision of his land. If the claimant had sought to create that use in 1974, as a matter of law, the use would have been subject to the interim planning goals at ORS 215.515.[4]

---

[3] The claimant's property is "agricultural land" because it contains Natural Resources Conservation Service (NRCS) Class I–VI soils.

[4] The "interim" land use goals are set forth in ORS 215.515(1)(a) to (j) (1973 edition) as follows: (a) "To preserve the quality of the air, water and land resources of the state," (b) "To conserve open space and protect natural and

The following interim goals are directly applicable to this claim: "To preserve the quality of the air, water and *land* [emphasis added] resources of the state"; "To conserve prime farm lands for the production of crops"; "To provide for the orderly and efficient transition from rural to urban land use"; "To protect life and property in areas subject to floods, landslides and other natural disasters"; "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation"; and "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." ORS 215.515 (1973 edition).

One of the interim goals was to "conserve prime farm lands for the production of crops." Soil types are a determinant of prime farm land. One hundred percent (153.73 acres) of the soils on tax lot 3700 are rated as "prime if irrigated" by the Natural Resource Conservation Service (NRCS).[5]

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimant acquired tax lot 3800 and the southern portion of tax lot 3700 in 1971 and the northern portion of tax lot 3700 in 1974, and do not allow the desired division or development of the property. However, the claim does not establish whether or to what extent the claimant's desired use of the northern portion of tax lot 3700 complies with the interim planning goals in effect when he acquired that tax lot on October 17, 1974.

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 use 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.

---

scenic resources," (c) "To provide for the recreational needs of citizens of the state and visitors," (d) "To conserve prime farm lands for the production of crops," (e) "To provide for the orderly and efficient transition from rural to urban land use," (f) "To protect life and property in areas subject to floods, landslides and other natural disasters," (g) "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation," (h) "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development," (i) "To diversify and improve the economy of the state" and (j) "To ensure that the development of properties within the state is commensurate with the character and the physical limitations of the land." ORS 215.515 (1973 edition).

[5] NRCS soil survey for Wallowa County. It appears that tax lot 3700 is covered by rights delivered by the Wallowa Valley Improvement District evidenced by certificates of water right 9391 and 9397. In addition, certificate 3149 includes two acres in the SW 1/4 NE 1/4 from Prairie Creek.

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 $1,776,972 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 comparison of similar property sales in the area.

Conclusions

As explained in Section V.(1) of this report, the claimant is Larry Fleshman who acquired tax lot 3800 and the southern portion of tax lot 3700 on March 22, 1971, and the northern portion of tax lot 3700 on October 17, 1974. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant acquired the subject property restrict the claimant's desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of $1,776,972.

Without an appraisal or other documentation and without verification of whether or the extent to which the claimant's desired use of the subject property was allowed under the standards in effect when the claimant acquired the property, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the 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.

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 Wallowa County has implemented through its current EFU zone. With the exception of applicable provisions of ORS 215, including the interim land use planning goals, in effect when the claimant acquired the northern portion of tax lot 3700 on October 17, 1974, these state land use regulations were not in effect when the claimant acquired the subject property.

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, with the exception of provisions of ORS 215 in effect when the claimant acquired the northern portion of tax lot 3700 on October 17, 1974, the general statutory, goal and rule restrictions on division and development of the claimant's property were not in effect when the claimant acquired each of the subject tax lots and therefore, are not exempt under ORS 197.352(3)(E). Provisions of ORS 215, including the interim statewide planning goals in effect when the claimant acquired tax lot 3700 on October 17, 1974, are exempt under ORS 197.352(3)(E) and will continue to apply.

Other laws in effect when the claimant acquired the subject property are also 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 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 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 use that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimant should be aware that the less information he has provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to his use of the subject property.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimant's desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by $1,776,972. 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 the subject property was allowed under the standards in effect when he 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 Larry Fleshman to use the subject property for a use permitted at the time he acquired tax lot 3800 and the southern portion of tax lot 3700 on March 22, 1971, and the northern portion of tax lot 3700 on October 17, 1974.

Conclusions

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Larry Fleshman's division of the 232.13-acre subject property into 16 parcels (one 40-acre, seven 20-acre, one 15-acre, two 10-acre and five 5-acre) and to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after he acquired each of the subject tax lots. These laws will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 3800 and the southern portion of tax lot 3700 on March 22, 1971 and the northern portion of tax lot 3700 on October 17, 1974.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on March 22, 1971, for tax lot 3800 and the southern portion of tax lot 3700 and on October 17, 1974, for the northern portion of tax lot 3700. On October 17, 1974, the property was subject to the applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition).

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

4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not

subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for him to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on October 16, 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. Comments received have been taken into account by the department in the issuance of this final report.