



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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October 25, 2007

To: Interested Persons  
From: Cora R. Parker, Acting Director



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M130986*

*Claimants: Raymond L. and Kaye L. Lehne*

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Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Final Staff Report and Recommendation of the Department of Land Conservation and Development, and the Final Order.

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

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  
COMPENSATION UNDER ORS 197.352 ) CLAIM NO. M130986  
(BALLOT MEASURE 37) OF )  
Raymond L. Lehne and Kaye L. Lehne, CLAIMANTS )

Claimants: Raymond L. Lehne and Kaye L. Lehne (the Claimants)

Property: Township 26S, Range 6W, Section 19, Tax lots 3900 and 4300  
Douglas County (the Property)

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

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

ORDER

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Raymond and Kaye Lehne's development of two farm dwellings on tax lot 4300 and one farm dwelling on tax lot 3900: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after the claimants acquired each subject tax lot. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 4300 on November 6, 1970, and when they acquired tax lot 3900 on February 16, 1978.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the property for the use described in this report, subject to the standards in effect on November 6, 1970, for tax lot 4300 and on February 16, 1978, for tax lot 3900. On February 16, 1978, tax lot 3900 was subject to applicable provisions of Goal 3 and ORS 215 then 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 the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

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

6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

This Order is entered by the Acting 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 Manager for the Measure 37 Services Unit 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:

  
Cora R. Parker, Acting Director  
DLCD  
Dated this 25<sup>th</sup> day of October, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
Carla Ploederer, Manager  
DAS, Measure 37 Services Unit  
Dated this 25<sup>th</sup> day of October, 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  
Final Staff Report and Recommendation**

October 25, 2007

**STATE CLAIM NUMBER:** M130986

**NAMES OF CLAIMANTS:** Raymond L. Lehne  
Kaye L. Lehne

**MAILING ADDRESS:** 553 Cleveland Rapids Road  
Roseburg, Oregon 97470

**PROPERTY IDENTIFICATION:** Township 26S, Range 6W, Section 19  
Tax lots 3900 and 4300  
Douglas County

**DATE RECEIVED BY DAS:** November 21, 2006

**DEADLINE FOR FINAL ACTION:<sup>1</sup>** May 14, 2008

**I. SUMMARY OF CLAIM**

The claimants, Raymond and Kaye Lehne, seek compensation in the amount of \$578,200 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 develop two farm dwellings on tax lot 4300 and one farm dwelling on tax lot 3900. The subject property is located on Cleveland Rapids Road, near Roseburg, in Douglas County.<sup>2</sup> (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

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<sup>1</sup> ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

<sup>2</sup> The claimants own a 26.4-acre tract of land consisting of tax lots 3900, 4000 and 4300. The tract is currently developed with two dwellings. Tax lots 3900 (9.91 acres) and 4300 (11.68 acres), the property subject to this claim, are separated by tax lot 4000 (4.81 acres). Tax lot 4000, previously partitioned from "Roseburg Home Orchard Tracts lot 11," is developed with two single family dwellings. Tax lot 3900, previously "Roseburg Home Orchard Tracts lot 12," is undeveloped. Tax lot 4300 was previously created from a subdivision of "Roseburg Home Orchard Tracts lot 10" and a merger with the eastern half of "Roseburg Home Orchard Tracts lot 11" and remains undeveloped. The claim states that tax lot 4300 is "two lots of record," apparently referring to the "Roseburg Home Orchard Tracts" lot 10 and one-half of lot 11.

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 Raymond and Kaye Lehne's development of two farm dwellings on tax lot 4300 and one farm dwelling on tax lot 3900: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after the claimants acquired each subject tax lot. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 4300 on November 6, 1970, and when they acquired tax lot 3900 on February 16, 1978. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On June 13, 2007, 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 November 21, 2006, for processing under OAR 125, division 145. The claim identifies Douglas County's Exclusive Farm Use-Cropland (FC-1) zoning as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

#### **Conclusions**

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

## V. ANALYSIS OF CLAIM

### **1. Ownership**

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

### **Findings of Fact**

The claimants, Raymond and Kaye Lehne, acquired tax lot 4300 on November 6, 1970, as reflected by a warranty deed included with the claim.

Raymond and Kaye Lehne first acquired an interest in tax lot 3900 from their family members, Myron and Helen Lehne, on March 26, 1974, as reflected by a warranty deed included with the claim. However, the deed by which they acquired the property was subject to a life estate in favor of Raymond Lehne’s uncle, E. W. Hoffman, which reserved in him the exclusive right to use the property during his lifetime. The claimants’ interest did not provide them with any present right to use the subject property during the life of E. W. Hoffman. The claimants acquired their present interest and right to use tax lot 3900 on February 16, 1978, as evidenced by a death certificate for E. W. Hoffman included with the claim. E. W. Hoffman originally acquired tax lot 3900 on or before October 4, 1965, as reflected by a bargain and sale deed included with the claim.<sup>3</sup>

The Douglas County Assessor’s Office confirms the claimants’ current ownership of the subject property.

### **Conclusions**

The claimants, Raymond and Kaye Lehne, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of November 6, 1970, for tax lot 4300 and as of February 16, 1978, for tax lot 3900. E. W. Hoffman is a “family member” of the claimants as defined by ORS 197.352(11)(A) as to tax lot 3900, and he acquired that tax lot on or before October 4, 1965.

### **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 acquired the property.

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<sup>3</sup> The claimants asserted that E. W. Hoffman acquired tax lot 3900 in the 1950s. However, the claimants did not provide any documentation to establish an earlier family acquisition date of tax lot 3900. Absent evidence to establish that E. W. Hoffman acquired tax lot 3900 on an earlier date, the department must rely on the available documentation to establish the date of family acquisition.

## **Findings of Fact**

The claim indicates that the claimants desire to develop two farm dwellings on tax lot 4300 and one farm dwelling on tax lot 3900, and that the property's current zoning prevents 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. The claimants' property is zoned FC-1 by Douglas County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.<sup>4</sup> 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 215.284 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, establish standards for development of dwellings on existing or proposed parcels on that land.

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.<sup>5</sup>

The claimants' family acquired tax lot 3900 on October 4, 1965, and the claimants acquired tax lot 4300 on November 6, 1970, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

## **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 tax lot 3900 and after the claimants acquired tax lot 4300. These laws restrict the use of the subject property relative to the uses allowed when the claimants' family acquired tax lot 3900 and the claimants acquired tax lot 4300.

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

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<sup>4</sup> The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

<sup>5</sup> The Commission adopted amendments to OAR 660-033-0100, -0130 and -0135 to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. These amendments clarified but did not further restrict dwelling standards for EFU-zoned land.

### **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 \$578,200 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 real estate broker’s assessment of the subject property’s value, included with the claim.

#### **Conclusions**

As explained in Section V.(1) of this report, the claimants are Raymond and Kaye Lehne whose family members acquired tax lot 3900 on October 4, 1965, and who acquired tax lot 4300 on November 6, 1970. Under ORS 197.352, the claimants are 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 claimants’ family acquired tax lot 3900 and the claimants acquired tax lot 4300 restrict the claimants’ desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$578,200.

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 tax lot 3900 and the claimants acquired tax lot 4300.

### **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 Douglas County has implemented through its current FC-1 zone. All of these land use regulations were enacted or adopted after the claimants’ family acquired tax lot 3900 and the claimants acquired tax lot 4300.

## **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 tax lot 3900 on October 4, 1965, and when the claimants acquired tax lot 4300 on November 6, 1970. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimants' family acquired tax lot 3900 and when the claimants acquired tax lot 4300 are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

## **VI. FORM OF RELIEF**

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

## **Findings of Fact**

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' 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 \$578,200. 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 claimants' desired use of the subject property was allowed under the standards in effect when the claimants' family acquired tax lot 3900 and the claimants acquired tax lot 4300. 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 Raymond and Kaye Lehne to use the subject property for a use permitted at the time they acquired tax lot 4300 on November 6, 1970, and at the time they acquired an ownership interest that included a right to use tax lot 3900 in a manner that could be restricted by land use regulations on February 16, 1978.

The claimants acquired an ownership interest that included a right to use tax lot 3900 in a manner that could be restricted by land use regulations after the adoption of the statewide planning goals, but before the Commission acknowledged Douglas County's land use regulations

to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.<sup>6</sup> At that time, tax lot 3900 was zoned General Agriculture by Douglas County, which allowed farm-related dwellings outright and conditionally allowed single-family dwellings. However, because the Commission had not acknowledged the county's plan and land use regulations when the claimants acquired tax lot 3900 on February 16, 1978, the statewide planning goals, and Goal 3 in particular, applied directly to tax lot 3900 when they acquired it.<sup>7</sup>

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. Under the Goal 3 standards in effect on February 16, 1978, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition).

The claim does not establish whether or to what extent the claimants' desired development of tax lot 3900 was allowed under the standards in effect when they acquired it on February 16, 1978.

In addition to the applicable provisions of Goal 3 and ORS 215 in effect when the claimants acquired tax lot 3900 on February 16, 1978, and other laws in effect when the claimants acquired the subject property, there may be other laws that apply to the claimants' use of the property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use, and depending on when they were enacted or adopted, may continue to apply to the claimants' property. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D) and will continue to apply to the subject property on that basis.

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 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 their claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

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<sup>6</sup> Douglas County's comprehensive plan and land use regulations were acknowledged by the Commission for compliance with Goal 3 on December 24, 1985. The decision was appealed and ultimately acknowledged on July 25, 1989.

<sup>7</sup> The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of each county's comprehensive plan and implementing regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev. den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer applied directly to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

## 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 Raymond and Kaye Lehne's development of two farm dwellings on tax lot 4300 and one farm dwelling on tax lot 3900: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after the claimants acquired each subject tax lot. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 4300 on November 6, 1970, and when they acquired tax lot 3900 on February 16, 1978.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the property for the use described in this report, subject to the standards in effect on November 6, 1970, for tax lot 4300 and on February 16, 1978, for tax lot 3900. On February 16, 1978, tax lot 3900 was subject to applicable provisions of Goal 3 and ORS 215 then 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 the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.
4. Any use of the subject property by the claimants 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 claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants 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 claimants.
6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

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

The department issued its draft staff report on this claim on September 19, 2007. 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. Comments received have been taken into account by the department in the issuance of this final report.