Oregon
Theodore R. Kulongoski, Governor

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November 6, 2007

To: Interested Persons

From: Cora R. Parker, Acting Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M131037

Claimants: John Ucolano and Jenny Lynn Scholl

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 COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF John Ucolano and Jenny Lynn Scholl, CLAIMANTS	))))	FINAL ORDER CLAIM NO. M131037

Claimants: John Ucolano and Jenny Lynn Scholl (the Claimant)

Property: Township 12S, Range 11W, Section 15, Tax lots 603 and 702
Lincoln County (the Property)

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

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

ORDER

The Claim is denied as to John Ucolan for tax lot 702 but otherwise approved to the subject property 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 the claimants' division and development, as described in this claim, for tax lot 603 and to Jenny Lynn Scholl's desired division and development, as described in this claim, for tax lot 702: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after the claimants acquired tax lot 603 and Jenny Lynn Scholl acquired tax lot 702. These laws will not apply to the claimants only to the extent necessary to allow them to use tax lot 603 and to allow Jenny Lynn Scholl to use tax lot 702 for the use described in this report, and only to the extent that use was permitted when the claimants acquired tax lot 603 on May 7, 1971, and Jenny Lynn Scholl acquired tax lot 702 on September 18, 1991.

2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lot 603 for the use described in this report, subject to the standards in effect on May 7, 1971, and to Jenny Lynn Scholl to use tax lot 702 for the use described in this report, subject to the standards in effect on September 18, 1991. On September 18, 1991, tax lot 702 was subject to

compliance with Goal 4 and OAR 660, division 6, as implemented through Lincoln County's acknowledged comprehensive plan and T-C zone.

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 Manager for the Measure 37 Services Division 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 of 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

Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 6th day of November, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Carla Ploederer, Manager
DAS, Measure 37 Services Unit
Dated this 6th day of November, 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

November 6, 2007

STATE CLAIM NUMBER:	M131037
NAMES OF CLAIMANTS:	John Ucolano Jenny Lynn Scholl
MAILING ADDRESS:	John Ucolano PO Box 809 South Beach, Oregon 97366 Jenny Lynn Scholl 729 North Wolkau Road Seal Rock, Oregon 97376
PROPERTY IDENTIFICATION:	Township 12S, Range 11W, Section 15 Tax lots 603 and 702 Lincoln County
OTHER CONTACT INFORMATION:	George B. Heilig PO Box 546 Corvallis, Oregon 97339
DATE RECEIVED BY DAS:	November 21, 2006
DEADLINE FOR FINAL ACTION:[1]	May 14, 2008

I. SUMMARY OF CLAIM

The claimants, John Ucolano and Jenny Lynn Scholl, seek compensation in the amount of $550,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 67.61-acre subject property into eight parcels and to develop a dwelling on each resulting undeveloped parcel.[2] The subject property is located at 729 N Wolkau Road, near Seal Rock, in Lincoln County. (See claim.)

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[1] 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.

[2] The subject property includes two contiguous tax lots. Tax lot 603 consists of 63.5 acres and tax lot 702 consists of 4.1 acres.

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid in part. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to the claimants' division and development, as described in this claim, for tax lot 603 and to Jenny Lynn Scholl's desired division and development, as described in this claim, for tax lot 702: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6, enacted or adopted after the claimants acquired tax lot 603 and Jenny Lynn Scholl acquired tax lot 702 These laws will not apply to the claimants only to the extent necessary to allow them to use tax lot 603 and to allow Jenny Lynn Scholl to use tax lot 702 for the use described in this report, and only to the extent that use was permitted when the claimants acquired tax lot 603 on May 7, 1971, and Jenny Lynn Scholl acquired tax lot 702 on September 18, 1991.

The department has further determined that the claim is not valid as to John Ucolano for tax lot 702 because he is not an owner of that tax lot. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 12, 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 provisions of ORS 215 and OAR 660, division 6, 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, John Ucolano and Jenny Lynn Scholl, acquired tax lot 603 on May 7, 1971, as reflected by a land sale contract included with the claim. Claimant Jenny Lynn Scholl acquired tax lot 702 on September 18, 1991, as reflected by a land sale contract included with the claim. John Ucolano asserts that he acquired tax lot 702 in May 1971; however, the claim does not include copies of any deeds or otherwise establish his ownership of tax lot 702.

The Lincoln County Assessor's Office confirms the claimants' current ownership of tax lot 603 and Jenny Lynn Scholl's current ownership of tax lot 702. Claimant John Ucolano is not an owner of tax lot 702.

Conclusions

The claimants, Jenny Lynn Scholl and John Ucolano, are "owners" of tax lot 603 as that term is defined by ORS 197.352(11)(C), as of May 7, 1971. Claimant Jenny Lynn Scholl is an "owner" of tax lot 702 as that term is defined by ORS 197.352(11)(C), as of September 18, 1991. John Ucolano has not established that he is an "owner" of tax lot 702 as that term is defined in ORS 197.352(11)(C).

2. The Laws That are the Basis for This Claim

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

Findings of Fact

The claim indicates that the claimants desire to divide the 67.61-acre subject property into eight parcels and to develop a dwelling on each resulting undeveloped parcel, and that current land use regulations prevent the desired use.

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimants' property is zoned Timber Conservation (T-C) by Lincoln County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimants' property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use.

Current land use regulations, including ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, generally prohibit the division of forest-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 generally establishes an 80-acre minimum size for the creation of new lots or parcels on forest-zoned land and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.705 to 215.755 establish standards for the creation of new parcels and dwellings allowed in forest zones.

OAR 660, division 6, became effective on September 1, 1982, to implement Goal 4 and establish standards for divisions and development of land zoned for forest use, and was amended on March 1, 1994, to implement ORS 215.705 to 215.755 and 215.780. OAR 660-006-0025 interprets the goal and statutory standard for uses allowed in forest zones. OAR 660-006-0026 interprets land division requirements in forest zones, and 660-006-0027 and 660-006-0029 interpret the standards for dwellings in forest zones.

The claimants, John Ucolano and Jenny Lynn Scholl, acquired tax lot 603 on May 7, 1971, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

When Jenny Lynn Scholl acquired tax lot 702 on September 18, 1991, it was subject to Lincoln County's acknowledged comprehensive plan and T-C zone.[3] That zone required a minimum lot size of 40 acres and allowed dwellings related to forest management use, and also allowed for "uses that would be generally consistent with the prevailing land use pattern in the area." At that time, Jenny Lynn Scholl's desired use of tax lot 702 would have been subject to compliance with Goal 4, and OAR 660, division 6, as implemented through the county's acknowledged comprehensive plan and T-C zone.[4]

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[3] Lincoln County's T-C zone was acknowledged by the Commission for compliance with Goal 4 on January 18, 1983.

[4] After the county's comprehensive plan and land use regulations were acknowledged by the Commission as complying with the statewide planning goals, the goals and implementing rules no longer applied directly to individual local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, 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).

The claim does not establish whether or to what extent Jenny Lynn Scholl's desired division and development of tax lot 702 were allowed under the standards in effect when she acquired that tax lot on September 18, 1991.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 ORS 215 and OAR 660, division 6, for forest-zoned land were enacted or adopted after the claimants acquired tax lot 603 in 1971 and Jenny Lynn Scholl acquired tax lot 702 in 1991 and do not allow the claimants' desired division or development of the property. These laws restrict the use of the property relative to the uses allowed when the claimants' acquired the property. However, the claim does not establish whether or to what extent Jenny Lynn Scholl's desired use of tax lot 702 complies with the standards for land divisions and development in Lincoln County's acknowledged comprehensive plan and T-C zone in effect when Jenny Lynn Scholl acquired tax lot 702 on September 18, 1991.

As explained in Section V.(1), claimant John Ucolano is not an "owner" of tax lot 702 as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict his use of tax lot 702 with the effect of reducing the fair market value of the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property, based on the uses that the claimants have identified. There may be other laws that currently apply to 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.

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 $550,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on a market analysis included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are John Ucolano and Jenny Lynn Scholl. The claimants acquired tax lot 603 on May 7, 1971, and Jenny Lynn Scholl acquired tax lot 702 on September 18, 1991. John Ucolano is not an "owner" of tax lot 702 as that term is

defined in ORS 197.352(11)(C). Therefore, no laws restrict his use of tax lot 702 with the effect of reducing the fair market value of that tax lot.

Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants acquired tax lot 603 and Jenny Lynn Scholl acquired tax lot 702 restrict the claimant's desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of $550,000.

Without an appraisal or other documentation, and without verification of whether or the extent to which Jenny Lynn Scholl's desired use of tax lot 702 was allowed under the standards in effect when she acquired that tax lot, 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.

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 4, ORS 215 and OAR 660, division 6, which Lincoln County has implemented through its current T-C zone. All of these land use regulations were enacted or adopted after the claimants acquired tax lot 603. With the exception of amendments adopted after September 18, 1991, Goal 4 and OAR 660, division 6, were in effect when Jenny Lynn Scholl acquired tax lot 702.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on residential division and development of tax lot 603 were in effect when John Ucolano and Jenny Lynn Scholl acquired that tax lot in 1971. As a result, these laws are not exempt under ORS 197.352(3)(E). It appears that the general statutory, goal and rule restrictions on residential division and development of tax lot 702 are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after Jenny Lynn Scholl acquired that tax lot in 1991. Provisions of Goal 4 and OAR 660, division 6, in effect when Jenny Lynn Scholl acquired tax lot 702 in 1991 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

As explained in Section V.(1) of this report, John Ucolano is not an "owner" of tax lot 702 as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to John Ucolano's claim for tax lot 702.

Other laws in effect when the claimants acquired tax lot 603 and Jenny Lynn Scholl acquired tax lot 702 are exempt under ORS 197.352(3)(E) and will also continue to apply to the claimants' use of the property. In addition, the department notes that ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-0027, -0029 and -0035, include fire protection standards for dwellings and structures in forest zones. ORS 197.352 (3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . ." Accordingly, the siting standards for dwellings and structures in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that 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. 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 claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

VI. FORM OF RELIEF

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

Findings of Fact

Based on the record, the department finds that the claim is not valid as to John Ucolano for tax lot 702 because he is not an owner of that tax lot. The department further finds laws enforced by the Commission or the department restrict the claimants' desired use of tax lot 603 and Jenny Lynn Scholl's desired use of tax lot 702. 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 $550,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in

Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of tax lot 603 and Jenny Lynn Scholl's desired use of tax lot 702 was allowed under the standards in effect when they 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 John Ucolano and Jenny Lynn Scholl to use tax lot 603 for a use permitted at the time they acquired that tax lot on May 7, 1971, and to allow Jenny Lynn Scholl to use tax lot 702 for a use permitted at the time she acquired that tax lot on September 18, 1991.

Conclusions

Based on the record before the department, John Ucolano has not established that he is entitled to relief under ORS 197.352(1) for tax lot 702 as a result of land use regulations enforced by the Commission or the department because he is not an owner of that tax lot. Therefore, the department recommends that the claim be denied as to John Ucolano for tax lot 702.

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 the claimants' division and development, as described in this claim, for tax lot 603 and to Jenny Lynn Scholl's desired division and development, as described in this claim, for tax lot 702: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after the claimants acquired tax lot 603 and Jenny Lynn Scholl acquired tax lot 702. These laws will not apply to the claimants only to the extent necessary to allow them to use tax lot 603 and to allow Jenny Lynn Scholl to use tax lot 702 for the use described in this report, and only to the extent that use was permitted when the claimants acquired tax lot 603 on May 7, 1971, and Jenny Lynn Scholl acquired tax lot 702 on September 18, 1991.

2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lot 603 for the use described in this report, subject to the standards in effect on May 7, 1971, and to Jenny Lynn Scholl to use tax lot 702 for the use described in this report, subject to the standards in effect on September 18, 1991. On September 18, 1991, tax lot 702 was subject to compliance with Goal 4 and OAR 660, division 6, as implemented through Lincoln County's acknowledged comprehensive plan and T-C zone.

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 October 4, 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.