

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES, THE DEPARTMENT
OF LAND CONSERVATION AND DEVELOPMENT OF THE STATE OF OREGON

IN THE MATTER OF THE CLAIM) FINAL ORDER
FOR COMPENSATION UNDER) CLAIM NO. M 118330
BALLOT MEASURE 37 (CHAPTER 1,)
OREGON LAWS 2005) OF)
Robert M. and Rachelle Lyn Hofer, CLAIMANTS)

Claimants: Robert M. and Rachelle Lyn Hofer (the Claimants)

Property: Tax Lot 1101, T.2N, R.4W, Section 23, W.M., Washington County

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

Claimants submitted the Claim to the State of Oregon under Ballot Measure 37 (2004) (Oregon Laws 2005, Chapter 1) (hereafter, Measure 37). 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 Measure 37, the State of Oregon will not apply the following laws to Robert M. and Rachelle Lyn Hofers' division of the 97 acres into smaller parcels for residential use: Statewide Planning Goal 4 (Forest Lands), ORS 215.705 to 215.755, 215.780, and applicable provisions of OAR 660, division 6, enacted after the claimants each first acquired an interest in the property, except for those provisions of ORS 215.730, Goal 4 and its implementing rules relating to dwelling siting standards that are based on public health and safety and are exempt under Section 3(B) of Measure 37. These land use regulations will not apply to Robert Hofer's use of the property only to the extent necessary to allow him a use permitted at the time he first acquired an interest in the property on October 20, 1986; and will not apply to Rachelle Hofer's use of the property only to the extent necessary to allow her a use permitted at the time she first acquired an interest in the property on March 11, 1996. The department acknowledges that the relief to which Rachelle Hofer is entitled under Measure 37 will not allow her to use the property in a manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to Robert Hofer to use the property subject to the standards in effect on October 20, 1986. On that date, the property was subject to the Washington County's EFC zoning (Section 342), as acknowledged by the Commission in 1984. Rachele Hofer is authorized to use the property subject to the standards in effect on March 11, 1996. On that date, the property was subject to Washington County's EFC zoning and the provisions of Statewide Planning Goal 4, ORS 215.705 to 215.755, 215.780, and applicable provisions of OAR 660, division 6. These are essentially the same provisions that are in effect today.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 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 ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

4. Any use of the 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 Measure 37 including, without limitation, those laws exempted under Section (3) of the Measure.

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the property, it may be necessary for them to obtain a decision under Measure 37, 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 Measure 37, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimants.

This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under Measure 37, 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 Measure 37, OAR 125, division 145, and ORS 293.

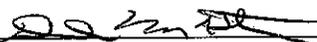
FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:
Lane Shetterly, Director



George Naughton, Deputy Director
DLCD

Dated this 7th day of October, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



David Hartwig, Administrator
DAS, State Services Division

Dated this 7th day of October, 2005.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

1. Judicial review under ORS 293.316: Judicial review under ORS 293.316 may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review under ORS 293.316 is pursuant to the provisions of ORS 183.482 to the Court of Appeals.
2. 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 and the Circuit Court in the county in which you reside.
3. A cause of action under Oregon Laws 2005, chapter 1 (Measure 37 (2004)): A present owner of the property, or any interest therein, may file a cause of action in the Circuit Court for the county where the property is located, if a land use regulation continues to apply to the subject property more than 180 days after the present owner made a written demand for compensation.

(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."

**BALLOT MEASURE 37 (CHAPTER 1, OREGON LAWS 2005)
CLAIM FOR COMPENSATION**

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

October 7, 2005

STATE CLAIM NUMBER: M118330

NAMES OF CLAIMANTS: Robert M. and Rachelle Lyn Hofer

MAILING ADDRESS: 16000 NW Hofer Road
Banks, Oregon 97106

PROPERTY IDENTIFICATION: Township 2N, Range 4W, Section 23
Tax Lot 1101
Washington County

OTHER CONTACT INFORMATION: William Cox, Attorney at Law
244 SW California Street
Portland, Oregon 97219

DATE RECEIVED BY DAS: April 18, 2005

180-DAY DEADLINE: October 15, 2005

I. SUMMARY OF CLAIM

The claimants, Robert M. and Rachelle Lyn Hofer, seek compensation in the amount of about \$21,127,000; for the reduction in fair market value as a result of certain 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 97-acre property into approximately 194, one-half-acre parcels for residential development. The property does not have a street address and is located at Township 2N, Range 4W, Section 23, tax lot 101, in Washington 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 by the Land Conservation and Development Commission (the Commission) or the department not apply to the claimants' division of the property for residential development: Statewide Planning Goal 4 (Forest Lands), Goal 14 (Urbanization), ORS 215.705 to 215.755, 215.780, and

applicable provisions of OAR 660, division 6. These laws will not apply to Robert Hofer's use of the property, only to the extent necessary to allow him a use of the subject property permitted at the time he first acquired an interest in the property on October 20, 1986; and to allow Rachelle Hofer a use of the property permitted at the time she first acquired her interest on March 11, 1996. The department acknowledges that the relief to which Rachelle Hofer is entitled under Measure 37, will not allow her to use the property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On May 12, 2005, 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, six written comments, evidence or information were received in response to the 10-day notice.

Five of the comments do not address whether the claim meets the criteria for relief (compensation or waiver) under Measure 37. Comments concerning the effects a use of the property may have on surrounding areas, generally, are not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waiving a state law. (See comment letters in the department's claim file.)

One of the comment letters is a petition signed by twenty-nine (29) of the "Neighbors of Robert and Rachelle Hofer." The petition includes information relevant to when the claimants became the present owners of the property; whether a state law restricts the claimants' use of the property; and whether the restriction of the claimants' use of the property reduces the fair market value of the property. The comments have been considered by the department in preparing this report. (See comment letter in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

Ballot Measure 37, Section 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 the Measure (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 the Measure (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 April 18, 2005, for processing under OAR 125, division 145. The claim identifies “all statewide planning goals and administrative rules, statutes adopted and enforced since purchase of the property by claimant” as laws that restrict the use of the property and are the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37, are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

Ballot Measure 37 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in the Measure. Ballot Measure 37, Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

The family of the claimants, Robert and Rachelle Hofer, first acquired a portion of the property on August 6, 1937, as reflected by the deed included with the claim. The claimants, Robert and Rachelle Hofer, acquired incremental “undivided” percentages of the subject property from their family between 1986 and 1997 (see deeds in claim file). Robert Hofer first began to acquire percentage interests of the property on October 20, 1986. Between October 20, 1986, and August 30, 1995, Robert Hofer acquired a 41% interest in the property (see deed exhibit #36 in the department’s claim file for acquisition history). Rachelle Hofer first acquired an “undivided” interest (16.949% of 59% or about 10%) together with Robert Hofer on March 11, 1996.¹

¹ On July 18, 1997, Robert Hofer acquired the remaining 49% of the property from the estate of Dorothy E. Hofer (his mother). On July 28, 1997, Robert Hofer conveyed to Rachelle Hofer an “undivided one-half (1/2) interest” in the subject property.

Conclusions

The claimants, Robert M. and Rachelle Lyn Hofer, are “owners” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37. Robert Hofer acquired an ownership interest as of October 20, 1986 and Rachelle Hofer acquired an ownership interest as of March 11, 1996. The claimants’ family first acquired an interest in the property on August 6, 1937.

2. The Laws that are the Basis for this Claim

In order to establish a valid claim, Section 1 of Ballot Measure 37 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 identifies “all statewide planning goals and administrative rules, statutes adopted and enforced since purchase of the property by claimant” as the laws that restrict the use of the property. Specifically, it lists Statewide Goals 3 (Agriculture Lands) and 4 (Forest Lands) and their corresponding administrative rules, OAR 660, divisions 6 and 33; Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources) and its administrative rules, OAR 660, division 16 and 23; OAR 660, division 14 and the Washington County zoning code designation of Exclusive Forest Conservation (EFC). With respect to Goal 5, the claim states that “at this time applicant is not aware of resources located on the site which have been designated Goal 5 resources.”²

The claim identifies the Washington County EFC zone as the land use regulation that restricts the use of the property. The EFC zone implements Statewide Planning Goal 4 (Forest Lands), the provisions of OAR 660, division 6, and statutes applicable to land zoned for forest use under ORS 215, including ORS 215.705 to 215.755 and 215.780 that restrict the property’s zoning, use and division.

Statewide Planning Goal 4 became effective on January 25, 1975, and required forest land, as defined by the Goal, to be zoned for forest use. (See citations to statutory and rule history under OAR 660-015-0000(4).) The forest land administrative rule, OAR 660, division 6, became effective September 1, 1982, and was substantially amended February 5, 1990, including amendments to OAR 660-06-026(4). ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993, (Chapter 792, Oregon Laws 1993) and were implemented by OAR 660-06-0026 and 0027 on March 1, 1994, also including amendments to OAR 660-06-026(4). (See citations to rule history under OAR 660-015-0000(4)). ORS 215.730(1)(b) establishes approval

² In addition to Goal 5, the claim summarily cites several statewide planning goals and divisions of OAR 660 that do not, on their face, appear to restrict the use of the property. In the absence of any explanation by the claimants as to how those regulations restrict the use of the property, this report does not address those regulations.

standards for dwellings on lands zoned for forest use to protect the public health and safety with regard to fire safety, water supply and development on steep slopes.

Statewide Planning Goal 14 would likely apply to the division of the claimants' property into parcels less than two-acres in size. Goal 14 generally requires that land outside of urban growth boundaries (UGB) be used for rural uses. Goal 14 became effective on January 25, 1975.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660-06-0026 and -0027 establish an 80-acre minimum lot size for the creation of a new parcel in a forest zone and also establish the standards for dwellings in forest zones.

The claimants' family acquired the subject property on August 6, 1937, prior to the adoption of local or state land use regulations that currently restrict the use of the property.

Conclusions

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 4 (Forest Lands) and provisions applicable to land zoned for forest use in ORS 215 and OAR 660, division 6 were all enacted after the claimants' family first acquired ownership of the subject property in 1937, and do not allow the division of the property for residential use, thereby restricting the use of the property relative to the uses allowed when the property was acquired by the claimants' family.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the use that the claimants have identified. There may be other laws that currently apply to the claimants' use of the 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 what laws apply to a use of 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, Section 1 of Ballot Measure 37 requires that any land use regulation 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 approximately \$21,127,000 as the reduction in the property's fair market value, due to the current regulations. The claim explains the basis for this estimate as follows:

"At the time of purchase (AUGUST 1937,) the property could have been divided into as many lots as could be serviced by on site sewer. Portions of the property

are served by an existing water supply system and the remainder is capable of creating a similar water supply system. With community water each lot could have been 20,000 square feet. The 97 acres current value as zoned (EFC) is approximately \$10,000 per acre. The current value of the property zoned as it was in 1937, before the cost of development, is estimated to be Twenty One Million One Hundred Twenty Seven Dollars (\$21,127,000). That figure is arrived at by estimating each 20,000 square foot parcel to have an average pre development real market value of One Hundred Thousand Dollars (\$100,000). The value figures will be more precisely supported by an appraisal if necessary. It is applicant's opinion however, that the appraisal is only relevant if the County and/or State decide to enforce the current use restrictions. The values used are consistent with recent sales of similar properties in the vicinity."

No additional information has been submitted in support of the estimate as provided. Comments from the "Neighbors" petition request denial of compensation because it is unreasonable to assume that the property could have been developed as suggested by the claimants' in 1937. According to the petition, it is unreasonable because "the absence of 'land use regulation' in 1937, simply reflects the difference in conditions in 1937 versus 2005."³

Conclusions

As explained in Section V.(1) of this report, the claimants' family first acquired the property in 1937. The current owners, Robert and Rachelle Hofer, acquired their interest in the property in 1986, and 1997, respectively. Under Ballot Measure 37, Robert and Rachelle Hofer are entitled to compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2), state laws restrict the division of the subject property and residential development. The claimants estimate the reduction in value due to land use restrictions to be \$21,127,000.

Without an appraisal or other documentation it is not possible to determine the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that some additional development than currently permitted would have been possible in 1937, and that there has been some reduction in the fair market value of the subject property as a result of land use regulations enforced by the Commission or the department.

³ According to the comments, in 1937, the property was distant from the established population centers of the time and "with rudimentary transportation vehicles and roadways compared to 2005." Further, "the economic livelihood in the locale of the subject property was almost entirely resource-based: agriculture and forestry – a condition not compatible with a subdivision of 211 families. These would have been families mostly without local livelihoods and unreliable, unserviceable daily commuting conditions." The comments point out how many lots platted in the area around 1900 and the 1930's remained or remain undeveloped for lack of a market. The commenter concludes by stating that the "claim is wildly speculative, illogical for both 1937 and 2005 and designed to stampede the government into waiver of land use regulations."

4. Exemptions under Section 3 of Measure 37

Ballot Measure 37 does not apply to certain land use regulations. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

Findings of Fact

The identified state land use regulations that are the basis for this claim include Statewide Planning Goal 4 (Forest Lands), and applicable provisions of ORS 215 and OAR 660, division 6, which Washington County has implemented through its current EFC zone. These identified regulations are not exempt under Section 3(E) of Measure 37, which exempts laws in effect when the claimants' family acquired the property.

ORS 215.730 and OAR 660, division 6 include standards for siting dwellings in forest zones. Those provisions include fire protection standards for dwellings and for surrounding Forest Lands. Section 3(B) of Measure 37 specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes..." The department finds that siting standards for dwellings in forest zones in ORS 215.730 and in Goal 4 and its implementing rules (OAR 660, division 6) are exempt under Section 3(B) of Measure 37.

Conclusions

Without a specific development proposal for the property, it is not possible for the department to determine what laws may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under Measure 37. It does appear that the general statutory, goal and rule restrictions on residential development and use of farm land apply to the claimants' use of the property, and for the most part these laws are not exempt under Section 3(E) of Measure 37. The fire protection standards for dwellings and surrounding forest lands in ORS 215.730 and OAR 660, division 6 are exempt under Section 3(B) of the Measure and will continue to apply to the property.

Laws in effect when the claimants' family acquired the property are exempt under Section 3(E) of Measure 37, and will continue to apply to the claimants' use of the property. There may be other laws that 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 what laws apply to a use of 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, in some cases, some of these laws may be exempt under subsections 3(A) to 3(D) of Measure 37.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under Section 3 of Measure 37 that are clearly applicable given the information provided to the department in the claim. The claimant 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 property.

VI. FORM OF RELIEF

Section 1 of Measure 37 provides for payment of compensation to an owner of private real property if the Commission or the department has enforced a law that restricts 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 current owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director 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 division of the 97-acre property into smaller parcels for residential use.

The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by about \$21,127,000. However, because the claim does not provide an appraisal or other specific documentation for how the specified restrictions reduce the fair market value of the property, a specific amount of compensation cannot be determined.

Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Robert Hofer to use the subject property for a use permitted at the time he first acquired an interest in the property on October 20, 1986, and to allow Rachele Hofer to use the subject property for a use permitted at the time she first acquired an interest in the property on March 11, 1996.

On October 20, 1986, the subject property was zoned by Washington County as EFC (Section 342 of County Code). The local zone was acknowledged by the Commission on May 31, 1984. (See Acknowledgment Order 84-ACK-103, dated July 30, 1984 (Section IV, pp.160-20)). The EFC zone required new forest and farm land divisions to include at least 76-acres (Section 342-6) and only allowed new parcels less than 76-acres based on certain standards under Section 424. Section 424 required forest parcels less than 76-acres to be based on "compelling evidence which demonstrates" that, in part, "the proposed lot area provides for resultant parcels of sufficient size to ensure:

- A. The best forestry utilization of the land;
- B. Forest practices may take place in an economic manner, and
- C. That forest uses will be the primary use of such lands."

Section 342-2.2 provides for dwellings in conjunction with forest use that, in part, must be on a lot or parcel of 10-acres or more and determined to be "necessary and accessory to forest use" (see Section 430-37.2F). Section 342-4.1(G) provides for non-forest dwellings subject to standards in Section 430-87 of the County Code.

When Rachelle Hofer first acquired her interest in the property on March 11, 1996, the property was subject to Washington County's EFC zoning and the provisions of State Planning Goal 4, ORS 215.705 to 215.755, 215.780, and applicable provisions of OAR 660, division 6 described in Section V.(2) of this report. These are essentially the same provisions that are in effect today.

Conclusion

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

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Robert M. and Rachelle Lyn Hofers' division of the 97 acres into smaller parcels for residential use: Statewide Planning Goal 4 (Forest Lands), ORS 215.705 to 215.755, 215.780, and applicable provisions of OAR 660, division 6, enacted after the claimants each first acquired an interest in the property, except for those provisions of ORS 215.730, Goal 4 and its implementing rules relating to dwelling siting standards that are based on public health and safety and are exempt under Section 3(B) of Measure 37. These land use regulations will not apply to Robert Hofer's use of the property only to the extent necessary to allow him a use permitted at the time he first acquired an interest in the property on October 20, 1986; and will not apply to Rachelle Hofer's use of the property only to the extent necessary to allow her a use permitted at the time she first acquired an interest in the property on March 11, 1996. The department acknowledges that the relief to which Rachelle Hofer is entitled under Measure 37 will not allow her to use the property in a manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to Robert Hofer to use the property subject to the standards in effect on October 20, 1986. On that date, the property was subject to the Washington County's EFC zoning (Section 342), as acknowledged by the Commission in 1984. Rachelle Hofer is authorized to use the property subject to the standards in effect on March 11, 1996. On that date, the property was subject to Washington County's EFC zoning and the provisions of Statewide Planning Goal 4, ORS 215.705 to 215.755, 215.780, and applicable provisions of OAR 660, division 6. These are essentially the same provisions that are in effect today.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 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 ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

4. Any use of the 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 Measure 37 including, without limitation, those laws exempted under Section (3) of the Measure.

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the property, it may be necessary for them to obtain a decision under Measure 37, 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 Measure 37, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on September 16, 2005. 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.