

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

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

**Final Staff Report and Recommendation
July 8, 2005**

STATE CLAIM NUMBER: M119219

NAME OF CLAIMANTS: Kenneth L. Jespersen, Lorna Jespersen,
Lawrence C. Jespersen, and V. Maureen
Jespersen

MAILING ADDRESS: 12525 Swan Lake Road
Klamath Falls, Oregon 97603

IDENTIFICATION OF PROPERTY: Township 38S, Range 11-1/2 E, Section 33
Tax Lots 1300, 1700, 1800, 1900
Klamath County

Township 39S, Range 11-1/2 E, Section 4
Tax Lots 1500, 1600
Klamath County

OTHER CONTACT INFORMATION: Michael L. Spencer, Attorney at law
419 Main Street
Klamath Falls, Oregon 97601

OTHER INTERESTS IN PROPERTY: Easement on Parcel 1 (Tax Lot 1300) to
Pacific Power & Light Company for an
overhead electrical circuit.

DATE RECEIVED BY DAS: January 10, 2005

180-DAY DEADLINE: July 9, 2005

I. CLAIM

The claimants, Kenneth Jespersen, Lorna Jespersen, Lawrence C. Jespersen, and V. Maureen Jespersen, seek compensation in the amount of \$1,916,250 for 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 121.34 acres into five-acre lots for residential development. The property is located in Klamath County and is described by the Klamath County Assessor as Section 33, Tax Lots 1300 (3.04 acres), 1700 (17.19 acres),

1800 (20.22 acres), and 1900 (20.02 acres); and Section 4, Tax Lots 1500 (23.92 acres) and 1600 (36.95 acres); Township 38 South, Range 11-1/2 East of the Willamette Meridian. (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 laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to the claimants to allow the claimants to divide and establish residential dwellings on the subject properties: ORS 215.236, 215.243, 215.263, 215.282, 215.283, 215.284, 215.296, 215.700, 215.705, 215.720, 215.730, 215.740, 215.750, 215.755, 215.780; OAR 660-006-0015, 660-006-0025, 660-006-0026, 660-006-0027, 660-006-0029, 660-006-0050, 660-006-0055, 660-006-0057, and OAR 660, Division 33 to the extent necessary to allow the claimants a use of the property permitted at the time they acquired the property that is the subject of this claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

On May 2, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to owners of surrounding properties. According to DAS, two written comments, evidence, or information were received in response to the 10-day notice. Comments on the relevant criteria under Measure 37 are addressed in the relevant sections of this report.

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 January 10, 2005, for processing under OAR 125, division 145. The claim cites various statutes in ORS 215 and rules in OAR 660, Divisions 6 and 33

(ORS 215.236, 215.243, 215.263, 215.282, 215.283, 215.284, 215.296, 215.700, 215.705, 215.720, 215.730, 215.740, 215.750, 215.755, 215.780; OAR 660-006-0015, 660-006-0025, 660-006-0026, 660-006-0027, 660-006-0029, 660-006-0055, 660-006-0057; and OAR 660, Division 33), as the laws that restrict the use of the subject property. 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

This claim was 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

Lawrence and Maureen Jespersen acquired Tax Lots 1500, 1600, and 1700 on April 19, 1979. On July 18, 1980, Lawrence and Maureen Jespersen conveyed an undivided one-half interest in Tax Lots 1500, 1600, and 1700 to Lawrence’s brother, Kenneth L. Jespersen, and Kenneth’s wife, Lorna C. Jespersen). On July 22, 1980, Kenneth, Lorna, Lawrence, and Maureen Jespersen jointly acquired Tax Lots 1300, 1800 and 1900.

The claimants’ attorney advised department staff that there have been no ownership changes since 1980¹. Klamath County Assessor records substantiate the ownership claim by showing “Kenneth L. Jespersen et al” and Kenneth L. and Lorna Jespersen and Lawrence C. Jr. and V. Jespersen, as owners of the six Tax Lots that are the subject of this claim.

Conclusions

Kenneth L. Jespersen, Lorna C. Jespersen, Lawrence C. Jespersen, Jr., and V. Maureen Jespersen² are “owners” of the subject property, as that term is defined in Section 11(C) of Measure 37

¹ See March 31, 2005, letter from Michael Spencer in the department’s claim file.

² There is only one signature on the DAS claim form; however, the form lists all four owners, and the cover letter from their lawyer states that he is filing on behalf of “my clients, the Jespersen’s [sic],” and the claim narrative repeatedly refers to “claimants.” (See the claim.)

2. The Laws That Are the Basis For the 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

As the basis for the claim, the claim generally cites "Any and all regulations adopted after July 22, 1980," and it also identifies the following specific laws alleged to have restricted use of the property: ORS 215.213, 215.236, 215.243, 215.263, 215.282, 215.284, 215.296, 215.700, 215.705, 215.720, 215.730, 215.740, 215.750, 215.755, and 215.780; OAR 660-006-0015, 660-006-0025, 660-006-0026, 660-006-0027, 660-006-0029, 660-006-0050, 660-006-0055, and 660-006-0057; and OAR 660, Division 33. These laws cover both agricultural and forest lands.

The claimants' property is zoned Forestry/Range (FR), which is a mixed agricultural and forestland zone adopted to comply with Statewide Goal 4 (Forest Lands) and the implementing provisions of OAR 660-006-0050 (effective February 5, 1990) and subsequently amended on March 1, 1994 to comply with the provisions of HB 3661 (Chapter 792, Or Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Statewide Goals 3 and 4 are allowed except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993. No information was provided to the department regarding the predominant use of the property on January 1, 1993. Information has been requested from Klamath County in order to better determine what provisions of the county's FR zone apply to the subject property. Regardless, the property will be subject to either the requirements for dwellings applicable under exclusive farm use zoning required by Statewide Goal 3 and OAR 660, Division 33 or forest zone provisions required by Statewide Goal 4 and OAR 660, Division 006. This includes the dwelling standards asserted by the claimant as restricting the use of the property. However, no analysis of whether any of the tax lots can be approved for a dwelling under the applicable farm or forest provisions has been provided.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones which implement the 80-acre minimum lot size specified in ORS 215.780. Under OAR 660-006-0055, the claimants' property cannot be divided into parcels smaller than 80 acres as may have been possible under the county zones applied on April 1979 and July, 1980. However, no analysis of whether any of the tax lots can be divided for non-farm dwellings under ORS 215.263(5)(b) has been provided.

ORS 215.213, regarding uses permitted in EFU zones in marginal lands counties, does not apply to this claim because Klamath County has not adopted a marginal lands system. Instead, ORS 215.283, not cited in the claim, is the relevant statute for uses, including dwellings permitted in EFU zones in Klamath County.

Other statutes cited in the claim established the standards for approval of dwellings on land zoned EFU or forestland, including ORS 215.236 (1981), 215.282 (1983), 215.284 (1983), 215.296 (1989), 215.705 (1993), 215.720 (1993), 215.730 (1993), 215.740(1993), 215.750 (1993), and 215.755 (1997).

The claimants acquired the property in April 1979 and July 1980, when it was designated by Klamath County for resource use³. However, at that time, the County's resource zones were not acknowledged by the Commission under the standards for state approval of comprehensive plans and land use regulations pursuant to ORS 197.250 and ORS 197.251. Because the Commission had not acknowledged Klamath County's local comprehensive plan and land use regulations, including the zones that applied to the subject property, certain site-specific goal provisions, including Statewide Planning Goals 3 and 4, applied directly to the property when the claimants acquired it in April 1979, and July 1980.

Klamath County's EFU-Grazing, EFU-Grazing-Crop, EFU-Crop, Forestry (F), and Forestry/Range (FR) zones were not acknowledged until June 1, 1984. Until the Commission acknowledged the County's land use regulations, the use of the subject property was subject to both the County's ordinances and the applicable Statewide Planning Goals.⁴

Statewide Planning Goals 3 and 4 became applicable to the claimants' use of the properties on January 25, 1975, and applied to legislative land use decisions and some quasi-judicial land use

³ Klamath County Planning Director Heather Marlow advised department staff that Tax Lots 1500 and 1600 were zoned SP-2 on March 9, 1979. This zone was never submitted to the department for acknowledgment, and Ms. Marlow does not know what this zone was for. She advised staff that the 1979 zoning map pages for Tax Lots 1300, 1700, 1800, and 1900 are missing, and so the zoning for these parcels as of April 1979, and July 1980, is not known. Klamath County revised its zoning map on November 25, 1981, after claimants' acquisition. Ordinances 44 and 45 (1981) designated the subject property as follows: Tax Lots 1300 and 1700, Transitional (TZ), which prohibited any partitioning; Tax Lots 1800 and 1900, F1 (Forestry), which had a minimum lot size of 80 acres; and Tax lots 1500 and 1600, F2 (Forestry), which had a minimum lot size of 20 acres. The 1981, designations were not acknowledged; see footnote #4.

⁴ On March 12, 1982, the Commission first reviewed Klamath County's comprehensive plan and land use regulations (County Ordinances 44 and 45, adopted November 11, 1981). The Commission found that the County comprehensive plan and land use regulations did not comply with Goals 3 and 4, and it continued the County's acknowledgment request (LCDC Order dated March 22, 1982; staff report dated February 18, 1982). At the same meeting, the Commission also adopted an enforcement order that directed Klamath County to not approve any partitions or subdivisions on lands zoned EFU, Agriculture Use (AU 5 acres and 20 acres), Transitional Zone (TZ), Rural Community Residential (RCR), Rural (R), and Rural Residential (RR), until the Commission acknowledged the county's plan and land use regulations (LCDC Order signed March 22, 1982).

The Commission again considered the County's acknowledgment request on April 21, 1983 and again found that the plan and regulations did not comply with Goals 3 and 4. The Commission again continued the request (LCDC Continuance Order dated May 16, 1983; staff report dated April 7, 1983).

On June 1, 1984, the Commission considered the County's acknowledgment request for the third time. The Commission found that County Ordinances 44.2, 44.4 and 45.2 complied with Goals 3 and 4 (LCDC Acknowledgment Order 84-ACK-135 dated August 6, 1984; staff report dated May 18, 1984 and as amended by LCDC June 1, 1984). The Commission did not acknowledge certain exception areas and certain rezonings to resource zones until October 24, 1985.

decisions, on a site-specific basis, before the commission acknowledged local plans.⁵ Goal 3, as adopted in 1975, required that agricultural lands be “preserved and zoned for EFU pursuant to ORS 215.” The subject property is “agricultural land” as defined by Goal 3 because it is comprised of predominantly Class VI or better soils and was subject to resource zoning pursuant to ORS 215 when the claimants acquired it in April 1979, and July 1980. Based on the 1975 air photo included in the Klamath County Soil Survey, which shows the subject properties as open rangeland, it is likely that they would be subject to Goal 3 (Agricultural lands).

In 1979, and 1980, the state standards for a division of land without acknowledgment of the local zoning required that the created lots or parcels be of a size “appropriate for the continuation of the existing commercial agricultural enterprise in the area” (see Statewide Planning Goal 3). Further, ORS 215.263 (1977 and 1979 editions) required that all land divisions subject to EFU zoning comply with the legislative intent in ORS 215.243 (Agricultural Land Use Policy). Thus, the opportunity to divide the subject property when acquired by the claimants in 1979, and 1980 was limited by Goal 3 to new lots or parcels that were (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area,” and (2) shown to be consistent with the ORS 215.243 legislative intent.

At the time of claimants’ acquisition in April 1979, and July 1980, farm dwellings were allowed if they were determined to be “customarily provided in conjunction with farm use” under ORS 215.213(1)(e)(1977 and 1979 editions), and non-farm dwellings were subject to ORS 215.213(3)(1977 and 1979 editions).⁶ Other uses were authorized and governed by the applicable provisions under Goal 3 and ORS 215.213.

No information has been provided showing that the division or placement of dwellings desired by the claimants complies with either the minimum lot size standard for farm parcels under Goal 3, the standards for new non-farm parcels under ORS 215.263 (1977 and 1979 editions), or the approval standards for dwellings in effect at the time the Jespersens acquired their interest in the property in April 1979, and July 1980.

⁵ See *Sunnyside Neighborhood Association v. Clackamas County*, 280 Or 569 (1977); *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978); *Jurgenson v. Union County*, 42 Or App 505 (1979); *Alexanderson v. Polk County*, 289 Or 427, *rev den* 290 or 137 (1980); and *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985). After the commission acknowledged the county’s plan and land use regulations, the Statewide Planning Goals and implementing rules no longer directly applied to local land use decisions (see *Byrd v. Stringer*, 295 Or 311 (1983)). However, insofar as state and local provisions are materially the same in substance, the applicable statutes and rules must be interpreted and applied by the county in making its decision (*Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992)). In addition, state statutes continue to apply to the use of property in the county directly, even after acknowledgment.

⁶ Under ORS 215.213, a farm dwelling may be established on agricultural land only if the farm use to which the dwelling relates exists (*Matteo v. Polk County*, 11 Or LUBA 259, 263 (1984), *affirmed without opinion* 70 Or App 179 (1984), and *Newcomer v. Clackamas County*, 92 Or App 174, *modified* 94 Or App 33 (1988)). Guidance on the application of the statutory standards for farm and non-farm dwellings in EFU zones can be found in Commission rules (OAR 660, Division 5 adopted July 21, 1982, amended June 7, 1986 and repealed August 7, 1993).

Conclusions

The current provisions applicable to lands zoned Forest/Range (FR) under OAR 660-006-0050 and 0055 relating to land divisions and dwelling standards adopted since the claimants acquired the property on April 19, 1979 and on July 18 and 22, 1980, restrict the use of the property relative to uses allowed when Claimants acquired the property in 1979 and 1980. Under these current provisions, the claimants are restricted from further dividing or developing their property as they could have when they acquired it. Additional land use regulations in ORS 215 and OAR 660, Divisions 6 and 33 cited by the claimants were adopted after they acquired the subject property in 1979, and 1980 and also restrict the use of the property relative to the uses allowed when they acquired it.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that laws 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 estimates a fair market value under current land use regulations of \$127,740.⁷ The claim estimates a fair market value of the subject property without the land use restrictions of \$2,000,000 “or more,” and a reduction in value of \$1,916,250 due to restrictive land use regulations. The claim includes no appraisal or other documentation to substantiate these estimated values.

Comments Received

DAS received one comment, stating that the fair market value of Jespersen’s 140 acres is \$315,000, not \$1,916,250.

Response to Comments

The subject property totals 121 acres, not 140 acres. The comment is based on the belief that the value of a Measure 37 claim is the current value under land use regulations. Under Section (2) of Measure 37, the amount demanded for compensation is the difference, if any, between the current fair market value with restrictions, and what the fair market value would be without those restrictions. The amount that the Jespersens demand, \$1,916,250, is higher than the current market value, which they assert to be \$127,470, based on their claim that the property would be worth more if it could be divided as they wish.

⁷ Klamath County Assessor records included in claimants’ Measure 37 claim to the County show a total real market value for the six subject parcels of \$127,470. Claimants’ lawyer advised department staff that this is also the current market value for purposes of the state claim.

Conclusions

Statewide Planning Goals 3 (Agricultural Lands) (OAR 660-015-0000(3)) and 4 (Forest Lands) (OAR 660-015-0000(4)) were in effect at the time claimants, acquired ownership in April 1979, and July 1980. The specific provisions of ORS 215 and OAR 660, Division 006 and 033 cited in the claim pertaining to specific minimum lot size and dwelling standards were enacted after April 1979, and July 1980. These laws do not allow division of the subject property and therefore have the effect of reducing its fair market value to some extent. The exact amount of such reduction is not known. The claim asserts this amount to be \$1,916,250. However, because the claim does not include an appraisal or other substantiating documentation, a specific amount of compensation amount cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that some of the laws on which the claim is based more likely than not have reduced the fair market value of the property to some extent.

4. Exemptions Under Section 3 of Measure 37

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

Findings of Fact

The relevant regulations are Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands) and numerous provisions in ORS 215 and OAR 660, Divisions 6 and 33. Goals 3 and 4. The provisions of these laws that were enacted before 1979, and 1980 are exempt under Section 3(E) of Measure 37. None of the other cited regulations appear to be exempt under Section 3(E) of Measure 37.

Conclusions

Based on the information provided, the department determines that Statewide Planning Goals 3 (Agricultural Lands) (OAR 660-015-0000(3)) and 4 (Forest Lands) (OAR 660-015-0000(4)) were enacted prior to the claimants' acquisition of the subject property and are exempt under Section 3(E) of the Measure. There may be other specific laws that are exempt and continue to apply under one or more of the exemptions in the Measure, or because they are laws that are not covered by the measure to begin with.

VI. FORM OF RELIEF

Section 1 of Measure 37 provides for payment of compensation to an owner of private real property if the department or Commission 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 a law to allow the present owner to carry out a use of the property permitted at the time the owner acquired the property. The Commission, by rule, has directed that if the department determines that 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 department restrict the division of the subject property into parcels or lots and their use for residential purposes. The six Tax Lots totaling 121.34 acres cannot be divided into five-acre lots or parcels for residential development. The laws enforced by the Commission or department reduce the fair market value of the subject property to some extent. The claim asserts this amount to be \$1,916,250. However, because the claim does not include an appraisal or other substantiating documentation, a specific amount of compensation amount cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that some of the laws on which the claim is based more likely than not 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 one or more land use regulations to allow the claimants, Kenneth L. Jespersen, Lorna Jespersen, Lawrence C. Jespersen, and V. Maureen Jespersen, to use the subject property for a use permitted at the time they acquired the property.

Based on the findings and conclusions set forth in Section V. of this report, certain provisions of ORS 215 and OAR 660, Divisions 6 and 33 restrict the use of the property in a manner that reduces its fair market value, and these laws are not exempt as to the claimant's use of the property.

In lieu of payment of compensation, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of ORS 215 and OAR 660, Divisions 6 and 33 to allow the Jespersens to use the subject property for a use permitted at the time they acquired the property in April 1979, and July 1980.

Conclusions

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 the Jespersens to allow them to divide the subject six tax lots and establish one or more dwellings on the resulting lots parcels: the provisions of ORS 215.236, 215.243, 215.263, 215.282, 215.283, 215.284, 215.296, 215.700, 215.705, 215.720, 215.730, 215.740, 215.750, 215.755, 215.780; OAR 660-006-0015, 660-006-0025, 660-006-0026, 660-006-0027, 660-006-0029, 660-006-0050, 660-006-0055, 660-006-0057; and OAR 660, Division 33 that were enacted on or after April 19, 1979 as to Lawrence and Maureen Jespersen, and on or after July 18, 1980 as to Kenneth and Lorna Jespersen for tax lots 1500, 1600 and 1700; and on or after July 22, 1980 as to all four claimants for tax lots 1300, 1800 and 1900,

2. The action by the State of Oregon provides the state's authorization to the claimants to use their property subject to the standards in effect on April 19, 1979 and July 18 and 20, 1980, the exact date dependent on when each of the claimants acquired the subject tax lots. On those dates, the property was subject to Statewide Goal 3 and the minimum lot size standard specified therein (effective January 25, 1975). These provisions require that resulting new parcels be either (1) "appropriate for the continuation of the existing commercial agricultural enterprise in the area" and (2) shown to be consistent with the ORS 215.243 legislative intent; or shown to comply with the standards for the creation of non-farm parcels under ORS 215.263 (1977 or 1979 editions).

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 final 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 215.412 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 final order will remain subject to the following laws: (a) those laws not specified in (1) above; (2) 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 Klamath County or any other public jurisdiction that enforces land use regulations applicable to the property. Nothing in the final order will relieve the claimants from the necessity of obtaining a decision under Measure 37 from local public entities that have 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 June 17, 2005. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.