

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

IN THE MATTER OF THE CLAIM FOR) FINAL ORDER
COMPENSATION UNDER ORS 197.352) CLAIM NO. M 121593
(BALLOT MEASURE 37) OF)
Arthur Wilson, CLAIMANT)

Claimant: Arthur Wilson (the Claimant)

Property: Township 2S, Range 2W, Section 1, Tax lots 1000 and 1100,
Washington County (the property)

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

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

ORDER

The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

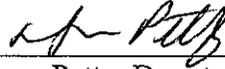
FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:
Lane Shetterly, Director



Cora R. Parker, Deputy Director
DLCD

Dated this 6th day of June, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 6th day of June, 2006.

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 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 197.352¹, 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)

¹ By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

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

IN THE MATTER OF THE CLAIM FOR)	FINAL ORDER
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M121593
(BALLOT MEASURE 37) OF)	
Gregg, Robert and Heather Wilson and)	
Laurie Gangadean, CLAIMANTS)	

Claimants: Gregg, Robert and Heather Wilson and Laurie Gangadean (the Claimants)

Property: Township 2S, Range 2W, Section 1, Tax lots 1000 and 1100, Washington County (the Property)

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

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

ORDER

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Gregg, Robert and Heather Wilson and Laurie Gangadean's division of the 61-acre property into 1-acre parcels or to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after December 29, 1993. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on December 29, 1993. The department acknowledges that the relief to which Gregg, Robert and Heather Wilson and Laurie Gangadean are entitled under ORS 197.352 will not allow them to use the subject property in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to claimants Gregg, Robert and Heather Wilson and Laurie Gangadean to use the property for the use described in this report, subject to the standards in effect on December 29, 1993. On that date, the property was subject to compliance with Washington County's acknowledged EFU zone, and the applicable provisions of Goal 3, ORS 215 and OAR 660 division 33, then in effect.

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

4. Any use of the 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.

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 ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:

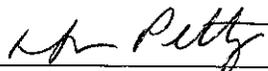
Lane Shetterly, Director



Cora R. Parker, Deputy Director
DLCD

Dated this 6th day of June, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 6th day of June, 2006.

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 197.352¹, 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.”

¹ By order of the Marion County Circuit Court, “all time lines under Measure 37 [were] suspended indefinitely” on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

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

June 6, 2006

STATE CLAIM NUMBER: M121593

NAMES OF CLAIMANTS: Arthur Wilson, Gregg Wilson,
Robert Wilson, Heather Wilson and
Laurie Gangadean

MAILING ADDRESS: 18177 Normandy Terrace SW
Seattle, Washington 98166

PROPERTY IDENTIFICATION: Township 2S, Range 2W, Section 1
Tax lots 1000 and 1100
Washington County

OTHER CONTACT INFORMATION: William C. Cox, Atty at Law
0244 Southwest California Street
Portland, Oregon 97219

DATE RECEIVED BY DAS: July 27, 2005

180-DAY DEADLINE: June 11, 2006¹

I. SUMMARY OF CLAIM

The claimants, Arthur Wilson and his children Gregg, Robert and Heather Wilson and Laurie Gangadean, seek compensation in the amount of \$14.5 million 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 61-acre property, consisting of tax lots 1000 and 1100, into 1-acre parcels and to develop a dwelling on each parcel. The subject property is located at 20300 Southwest Tile Flat Road 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 in part. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced

¹This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

by the Land Conservation and Development Commission (the Commission) or the department not apply to Gregg, Robert and Heather Wilson and Laurie Gangadean's division of the 61-acre property into 1-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215, Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after December 29, 1993. These laws will not apply to these claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on December 29, 1993. The department acknowledges that the relief to which Gregg, Robert and Heather Wilson and Laurie Gangadean are entitled under ORS 197.352 will not allow them to use the subject property in the manner set forth in the claim.

The department has further determined that the claim of Arthur Wilson is not valid because he is not a current owner of the subject property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On July 27, 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, two written comments, evidence or information were received in response to the 10-day notice.

The comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are not generally 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 waive a state law. (See the comment letters in the department's claim file.)

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 July 27, 2005, for processing under OAR 125, division 145. The claim identifies “all statewide planning goals and administrative rules” and specifically OAR 660, divisions 14, 16, 23, and 33, 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

Claimant Arthur Wilson first acquired the subject property (tax lots 1000 and 1100) by assignment of contract on May 21, 1965. Beginning on December 29, 1993, Mr. Wilson conveyed the subject property to his four children, Gregg, Robert and Heather Wilson and Laurie Gangadean. As of July 10, 1995, Arthur Wilson had conveyed all of his interest in the property to his children and did not intend to have any ownership interest in the subject property.

However, because of an error in the legal description of the property, Arthur Wilson did not convey to his children a 20’ by 439’ strip of land adjoining the corner of and providing access to tax lot 1100. The county alerted Mr. Wilson of this error in 1996; however, there is no indication that Mr. Wilson ever corrected the error, and this strip never was made a part of tax lot 1100. Based on title records, Mr. Wilson acquired this strip of land on July 7, 1987 when the previous owner “quit claimed” the strip to Arthur Wilson with consideration being “correction of legal description.” However, the previous owner’s title to the strip is not clear. The description of this strip of land was included in a 1945 deed but not in the subsequent deeds, including the deed by which the previous owner acquired the property.

The attorney for the claimants asserts that, notwithstanding the conveyance of tax lots 1000 and 1100 to his children, because Arthur Wilson owns or may own a strip of land accessing one of these tax lots, Mr. Wilson “retains an undivided interest in the property as a whole.”

A July 21, 2005, title report submitted with the claim lists Gregg, Robert and Heather Wilson and Laurie Gangadean as owners, each with an undivided 25 percent interest in the subject property.

Conclusions

Claimants Gregg, Robert and Heather Wilson and Laurie Gangadean are “owners” of the subject property as that term is defined by 197.352(11)(C), as of December 29, 1993. The claimants’ father, Arthur Wilson, is a “family member,” as that term is defined by ORS 197.352(11)(A), and acquired the property on May 21, 1965.

There was undoubtedly an error in the conveyance of the subject property before the previous owner’s acquisition and from Mr. Wilson to his children. However, the error was limited to the 20’ by 439’ strip of land providing access to tax lot 1100. The intent of the 1993 and subsequent conveyances was to convey, from Arthur Wilson to his children, full ownership of the subject property. Nonetheless, Arthur Wilson may retain ownership in the strip of land adjoining tax lot 1100 as of July 7, 1987. His ownership of that strip of land, however, does not provide him with an ownership interest in tax lots 1000 and 1100. Furthermore, this strip of land is not part of either tax lot 1000 or 1100 and therefore, is not a part of the subject property. The claimants have not established that Arthur Wilson is an “owner” of the subject property.²

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, 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 subject 61-acre property into 1-acre parcels, and to develop homes on each parcel, and numerous state laws restrict that desired use.³

The claim is based generally on Washington County’s current Exclusive Farm Use (EFU) zone and the applicable provisions of state law that require such zoning. The claimants’ property is zoned EFU as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants’ property is “agricultural land” as defined by Goal 3.⁴ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

² Even if the 20’ by 439’ strip of land that Mr. Wilson may own could be construed to be part of the subject property, he has not established how any laws enacted or adopted after July 7, 1987, when the previous owner conveyed to Mr. Wilson whatever interest that party may have had in that strip, have restricted his use of that strip of land in a manner that reduces its fair market value.

³ The claimants have summarily cited numerous state laws as applicable to this claim, but do not establish how each of the laws either applies to the subject property or restricts its use in a manner that reduces its fair market value. On their face, most of these regulations either do not apply to the claimants’ property or do not restrict its use in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants’ use of the subject property, based on the claimants’ asserted desired use.

⁴ The claimants’ property is “agricultural land” because it contains Natural Resources Conservation Service Class I-IV soils.

Current land use regulations, particularly ORS 215.213, 215.263 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land in marginal lands counties into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone in a marginal lands county under ORS 215.213. OAR 660-033-0130(4)(e) (applicable to non-farm dwellings in marginal lands counties) became effective on August 7, 1993. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

The Wilson family acquired the subject property on May 21, 1965. At that time, the property was subject to the Washington County's F-1 zone. When the Wilson family acquired the subject property, the desired division and development of the property would have been governed by the county's F-1 zone and the applicable provisions of ORS 215 then in effect.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, divisions 33, were all enacted or adopted after the Wilson family acquired the subject property in 1965 and do not allow the claimants' desired division or development of the property. These laws may restrict the use of the subject property relative to the uses that may have been allowed when the Wilson family acquired the property.⁵

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, 197.352(1) 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 \$14.5 million as the reduction in the subject property's fair market value due to current regulations. This amount is based on the claimants' estimate of the value of the property.

⁵ The claim does not establish whether or to what extent the claimants' desired use of the subject property was allowed under the standards for land divisions and development Washington County's F-1 zone in effect when the Wilson family acquired the property on May 21, 1965.

Conclusions

As explained in Section V.(1) of this report, the claimants are Arthur Wilson, who acquired the property on May 21, 1965, and his children, Gregg, Robert and Heather Wilson and Laurie Gangadean, to whom he has since conveyed the subject property. Under ORS 197.352, the claimants who currently own the subject property are due 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) of this report, laws enacted or adopted since the Wilson family acquired the subject property may restrict the desired division and development of the property. The claimants estimate the reduction in value due to the restrictions to be \$14.5 million.

Without an appraisal or other documentation, it is not possible to substantiate 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 the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Washington County has implemented through its current EFU zone. These laws were enacted or adopted after the Wilson family acquired the subject property.

Conclusions

It appears that the general statutory, goal and rule restrictions on the division and development of the subject property are not exempt under 197.352(3)(E) to the extent they were enacted after the claimants' family acquired the property on May 21, 1965.

VI. FORM OF RELIEF

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 current owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' ability to divide the 61-acre property into 1-acre parcels and to develop a dwelling on each parcel. The claim asserts that the laws enforced by the Commission or the department reduce the fair market value of the subject property by \$14.5 million. However, because the claim does not provide an appraisal or other specific documentation establishing how the specified restrictions reduce the fair market value of the subject 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 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 Gregg, Robert and Heather Wilson and Laurie Gangadean to use the subject property for a use permitted at the time they acquired the property on December 29, 1993.

At the time Gregg, Robert and Heather Wilson and Laurie Gangadean acquired the property in 1993, the property was subject to Washington County's acknowledged EFU zone, and provisions of Goal 3, ORS 215 and OAR 660, division 33, then in effect, as described in Section V. 2 of this report.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property, based on the use that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in 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.

Conclusions

Based on the record before the department, claimant Arthur Wilson is not entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because he is not a current owner of the subject property. Therefore, the department recommends that the claim as it relates to Arthur Wilson be denied.

The department otherwise recommends that the claim of Gregg, Robert and Heather Wilson and Laurie Gangadean 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 Gregg, Robert and Heather Wilson and Laurie Gangadean's division of the 61-acre property into 1-acre parcels or to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after December 29, 1993. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on December 29, 1993.

The department acknowledges that the relief to which Gregg, Robert and Heather Wilson and Laurie Gangadean are entitled under ORS 197.352 will not allow them to use the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to claimants Gregg, Robert and Heather Wilson and Laurie Gangadean to use the property for the use described in this report, subject to the standards in effect on December 29, 1993. On that date, the property was subject to compliance with Washington County's acknowledged EFU zone, and the applicable provisions of Goal 3, ORS 215 and OAR 660 division 33, then in effect.

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

4. Any use of the 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.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on May 19, 2006. 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.