Oregon
Theodore R. Kulongoski, Governor

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July 16, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130745

Claimants: James and Wilma Wells, John and Carolyn Wells, Gary and Maureen Wells and Scott Wells

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

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

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

IN THE MATTER OF THE CLAIM FOR	)	FINAL ORDER
COMPENSATION UNDER ORS 197.352	)	CLAIM NO. M130745
(BALLOT MEASURE 37) OF	)	
James and Wilma Wells, John and Carolyn Wells	)	
Gary and Maureen Wells and Scott Wells, CLAIMANTS	)	

Claimants: James and Wilma Wells, John and Carolyn Wells, Gary and Maureen Wells and Scott Wells (the Claimants)

Property: Township 3N, Range 11E, Section 31, Tax lot 900
Hood River County (the property)

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

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

ORDER

The Claim is denied as to 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 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 16th day of July, 2007.

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

Janice K. Dean, SSD Administrator
DAS, State Services Division
Dated this 16th day of July, 2007.

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 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

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

July 16, 2007

STATE CLAIM NUMBER:	M130745
NAMES OF CLAIMANTS:	James and Wilma Wells John and Carolyn Wells Gary and Maureen Wells Scott Wells
MAILING ADDRESSES:	James and Wilma Wells 1712 Wells Drive Hood River, Oregon 97031 John and Carolyn Wells 2155 Wells Drive Hood River, Oregon 97031 Gary and Maureen Wells 2118 Wells Drive Hood River, Oregon 97031 Scott Wells 2710 Glass Drive Hood River, Oregon 97031
PROPERTY IDENTIFICATION:	Township 3N, Range 11E, Section 31 Tax lot 900 Hood River County
OTHER CONTACT INFORMATION:	Steven B. Andersen Cascade Planning Associates PO Box 135 Mosier, Oregon 97040
DATE RECEIVED BY DAS:	November 15, 2006
DEADLINE FOR FINAL ACTION:[1]	May 8, 2008

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

I. SUMMARY OF CLAIM

The claimants, James, Wilma, John, Carolyn, Gary, Maureen and Scott Wells, seek compensation in the amount of $3,806,417 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 40-acre subject property into 2.5-acre parcels and to develop a dwelling on each resulting parcel. The property is located east of Highland Drive, near Hood River, in Hood River 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 not valid because the subject property is located within the Columbia River Gorge National Scenic Area (NSA). (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On May 21, 2007, pursuant to Oregon Administrative Rule (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, no written comments were received in response to the 10-day notice.

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or

2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on November 15, 2006, for processing under OAR 125, division 145. The claim identifies ORS 197 and 215; OAR 660 division 33; and amendments to Farm Zone A-2, Interim Farm-Use Protection, Forest (FR and F-1), Exclusive Farm Use (EFU) and High Value Farmland (HVF) zoning as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

The claimants, James, Wilma, John, Carolyn, Gary, Maureen and Scott Wells, acquired the subject property on April 7, 1980, as reflected by a deed included with the claim. The Hood River County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, James, Wilma, John, Carolyn, Gary, Maureen and Scott Wells, are "owners" of the subject property as that term is defined in ORS 197.352(11)(C), as of April 7, 1980.

2. The Laws That are the Basis for This Claim

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

Findings of Fact

The claim indicates the claimants desire to divide the 40-acre subject property into 2.5-acre parcels and to develop a dwelling on each resulting parcel, and that current land use regulations, including ORS chapters 197 and 215 and OAR 660, division 33, prohibit the desired use.

The subject property is currently zoned Small Woodland (G-F-3) by Hood River County and is located within the Columbia River Gorge NSA. Because the current zoning of the property is required by Columbia River Gorge Commission's Management Plan and the federal Columbia River Gorge Scenic Area Act, the land use regulations that restrict that claimants' desired use of the property are required to comply with federal law and are therefore, exempt under ORS 197.352(3). As a result, no state land use regulation restricts the claimants' desired use of the subject property.

Conclusions

Because the subject property is located within the Columbia River Gorge NSA, it is subject to restrictions, which are required to comply with federal law and which prohibit the claimants' desired use of the subject property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulations (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

As explained in Section V.(2) of this report, the subject property is located within the Columbia River Gorge NSA. Accordingly, the claimants' desired use is prohibited by land use regulations that are exempt under ORS 197.352(3), and no land use regulations enacted or enforced by the state have had the effect of reducing the fair market value of the subject property.

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.

As explained in Section V.(2) of this report, the subject property is located within the Columbia River Gorge NSA. The claimants' desired use is prohibited by land use regulations that are required to comply with federal law. ORS 197.352(3)(C) specifically exempts land use regulations that are required to comply with federal law. Therefore, the claimants' desired use of the subject property is prohibited.

VI. FORM OF RELIEF

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

Findings of Fact

Based on the findings and conclusions set forth in this report, the department finds that the subject property is located within the Columbia River Gorge NSA. Because land use regulations that are exempt under ORS 197.352(3) prohibit the claimants' desired use, the claim must be denied.

Conclusions

Based on the record, the subject property is located within the Columbia River Gorge NSA, and land use regulations, which prohibit development of the property, were enacted or adopted to comply with federal law and therefore, are exempt under ORS 197.352(3)(C). Therefore, the department recommends that the claim be denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on June 19, 2007. OAR 125-145 0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation.