

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. M118430
(BALLOT MEASURE 37) OF)
Franklin D. and Kimberly Simpson, and)
Robert C. and Suzanne Simpson , CLAIMANTS)

Claimants: Franklin D. and Kimberly Simpson, and Robert C. and Suzanne Simpson
(the Claimants)

Property: Tax Lot 300, Township 1S, Range 3W, Section 24, 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 Franklin D. and Kimberly Simpson and Robert C. and Suzanne Simpson's division of the property into four parcels (three parcels of approximately two acres each with an existing dwelling and one parcel of approximately 142 acres without a dwelling): applicable provisions of Statewide Planning Goal 3, ORS 215 and OAR 660, division 33 enacted after July 31, 2001. These land use regulations will not apply to Franklin D. and Kimberly Simpson and Robert C. and Suzanne Simpson's use of their property only to the extent necessary to allow them a use permitted at the time they acquired the property on July 31, 2001. The department acknowledges that the relief to which Franklin D. and Kimberly Simpson and Robert C. and Suzanne Simpson are entitled under ORS 197.352 will not allow them to use the property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to Franklin D. and Kimberly Simpson and Robert C. and Suzanne Simpson to use their property subject to the

standards in effect on July 31, 2001. On July 31, 2001, the property was subject to Statewide Planning Goal 3 (Agricultural Lands) and applicable provisions of ORS 215 and OAR 660, division 33, currently in effect.

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 obtains 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 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 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 property by the claimants.

This Order is entered by the 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.

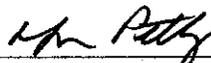
FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD

Dated this 22nd day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 22nd day of March, 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)

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.

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. M118430
(BALLOT MEASURE 37) OF)
Anastasia Simpson, CLAIMANT)

Claimant: Anastasia Simpson, (the Claimant)

Property: Tax Lot 300, Township 1S, Range 3W, Section 24, Washington County
(the Property)

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

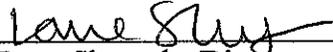
Claimant submitted the Claim to the State of Oregon under. Under OAR 125-145-0010
et seq., the Department of Administrative Services (DAS) referred the Claim to the
Department of Land Conservation and Development (DLCD) as the regulating entity.
This order is based on the record herein, including the 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 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.

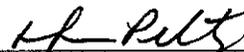
FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:


Lane Shetterly, Director

DLCD

Dated this 22nd day of March, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Dugan Petty, Deputy Administrator

DAS, State Services Division

Dated this 22nd day of March, 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.

**BALLOT MEASURE 37 (ORS 197.352)
CLAIM FOR COMPENSATION**

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

March 22, 2006

STATE CLAIM NUMBER: M118430

NAMES OF CLAIMANTS: Anastasia Simpson
Franklin D. and Kimberly Simpson
Robert C. and Suzanne Simpson

MAILING ADDRESS: c/o Jill Gelineau
Schwabe, Williamson & Wyatt
1211 Southwest Fifth Avenue, Suite 1900
Portland, Oregon 97204

PROPERTY IDENTIFICATION: Township 1S, Range 3W, Section 24
Tax Lot 300
Washington County

DATE RECEIVED BY DAS: May 13, 2005

180-DAY DEADLINE: March 28, 2006¹

I. SUMMARY OF CLAIM

The claimants, Anastasia Simpson, Franklin D. Simpson, Kimberly Simpson, Robert C. Simpson and Suzanne Simpson, seek compensation in the amount of \$470,000 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 property into four parcels: three parcels of approximately two acres each with an existing dwelling; and one parcel of approximately 142 acres without a dwelling. The property is located at 31535 Southwest Simpson Road, near Cornelius, 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 not valid as to Anastasia Simpson because no land use regulations restrict the use of her ownership interest in the property. The

¹ This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Measure 37 was suspended during the pendency of the appeal of *Macpherson v. Dep't of Admin. Servs.*, 340 Or ___, 2006 Ore. LEXIS 104 (February 21, 2006).

department determines that the claim is valid as to Franklin D. and Kimberly Simpson and Robert C. and Suzanne Simpson. 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 those claimants' division of the property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and OAR 660, division 33, enacted after July 31, 2001. These laws will not apply to claimants Franklin D. and Kimberly Simpson, and Robert C. and Suzanne Simpson, only to the extent necessary to allow them a use of the property permitted at the time they acquired it in 2001. The department acknowledges that the relief to which claimants Franklin and Kimberly Simpson, and Robert and Suzanne Simpson, are entitled under ORS 197.352 will not allow them 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 June 73, 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, one written comment, evidence or information was received in response to the 10-day notice.²

The comment is relevant to whether the restriction of the claimants' use of the property reduces the fair market value of the property. The comment has been considered by the department in preparing this report. (See the comment letter 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 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.

² The 10-day notice period was suspended for 139 days during the pendency of the *MacPherson v. Dep't of Admin. Servs.*, 340 Or ___, 2006 Ore. LEXIS 104 (February 21, 2006), which suspended all Measure 37 deadlines.

Findings of Fact

This claim was submitted to DAS on May 13, 2005, for processing under OAR 125, division 145. The claim lists a number of statutes, administrative rules and county land use provisions with respect to land use planning including all Commission administrative rules, land division statutes (ORS 92), and exclusive farm use zoning (ORS 215) applicable to the property as the basis for the claim (see Section V.(2)). 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

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’ family first acquired an interest in the property on June 19, 1878, when Anastasia Simpson’s grandfather-in-law John M. Simpson bought the property. On May 20, 1910, this property passed to Frank H. Simpson, Sr. In 1946, Frank H. Simpson, Sr.’s property was acquired by his sons Rolfe Simpson and Frank H. Simpson, Jr. On January 19, 1977, Frank H. Simpson, Jr. conveyed a portion of the property to Rolfe Simpson and on the same date Rolfe Simpson conveyed his interest to himself and his wife, Anastasia Simpson.³ On July 2, 1996, Anastasia Simpson conveyed the property to the Anastasia E. Simpson Trust, Anastasia Simpson trustee.⁴ Finally, on July 31, 2001, the Trust conveyed the property to her children and spouses, Franklin D. and Kimberly A. Simpson and Robert C. and Suzanne B. Simpson, but retained a “Life Estate as follows:

“Seller will retain a life estate for her life in the residence, landscaped area and garden around the house and the access to the house from the county road. Buyer will pay all real property taxes, owner’s fire insurance coverage and repairs and maintenance to keep the house in its present condition for the residence during the

³ The portion of the property retained by Frank H. Simpson Jr. is the subject of another claim (state claim M118424 for tax lot 100).

⁴ Transfer of the property to a revocable trust does not result in a change in ownership for purposes of ballot Measure 37.

term of the life estate. Seller will pay for utilities and the maintenance of the personal property in the house.”

A title report dated December 24, 2004, indicates that the claimants are the current owners of the property. (See deeds and other documents in the department’s claim file).

Conclusions

Based on information in the claim, the claimants are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of July 31, 2001. Anastasia Simpson’s interest is limited to that of a life estate, as described above. The property has been owned by “Family members,” as that term is defined by ORS 197.352(11)(A), since 1878 or 1910.⁵

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 lists a number of land use regulations that restrict the use of the property. These include ORS 92 and the exclusive farm use provisions of ORS 215, as well as OAR 660, divisions 1, 2, 4, 7, 8, 11, 12, 15, 16, 18, 23, 31, 33, and 45. The claim does not establish how each of these cited regulations restricts the use of the subject property. The department’s report is based on those statutes and rules that directly restrict the use of the subject property.⁶

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 Statewide Planning Goal 3, in accord with OAR 660, division 33, and ORS 215 because the claimants’ property is “agricultural land” as defined by Goal 3.⁷ Goal 3

⁵ Section 11(A) of Measure 37 defines “family member” to include “grandparent” and not a great grandparent and “father-in-law” and not a grandfather-in-law. John M. Simpson, the grandfather-in-law of Anastasia Simpson and great grandfather of her children, is a “family member” as that term is defined by Section 11(A) of Ballot Measure 37 as of June 19, 1878. Frank H. Simpson Sr., the “father-in-law” to Anastasia Simpson and “grandfather” to her children, Franklin D. and Kimberly A. Simpson and Robert C. and Suzanne B. Simpson, is also a “family member” as that term is defined by Section 11(A) of Ballot Measure 37 as of May 20, 1910.

⁶ The claimants summarily cite various sections of ORS 92 as restricting the use of the property. That chapter establishes land use procedures for the division of land. The claimants have not established how any provision of that chapter restricts the claimants’ use of the subject property. On its face, ORS 92 does not in itself restrict the use of the subject property. The claimants also summarily cite several 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 subject property, this report does not address those regulations further.

⁷ The claimants’ property is “agricultural land” because it is predominantly composed of NRCS (Natural Resources Conservation Service) Class I-IV Soils (see NRCS Web Soil Survey (<http://websoilsurvey.nrcs.usda.gov>))

became effective on January 25, 1975, and required that agricultural lands as defined by the goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.213, 215.263, 215.780 and OAR 660, division 33 as applied by Goal 3, do not allow the subject property to be divided into parcels less than 80 acres and establish standards for allowing the existing or any proposed parcels to have farm or non-farm dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993, (Chapter 792, Oregon Laws 1993). ORS 215.263 (2003 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

The claimants' family first acquired the subject property on either July 31, 1878, or May 20, 1910, when it was not zoned by Washington County and well before the establishment of the statewide planning goals and their implementing statutes and rules.

Conclusions

The current zoning requirements, lot size and dwelling standards established by Statewide Planning Goal 3 (Agricultural Lands) and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33, were all enacted after the claimants' family acquired ownership of the subject property in either 1878 or 1910, and do not allow the division of the property into four parcels (three parcels of approximately two acres each with an existing dwelling, and one parcel of approximately 142 acres without a dwelling), thereby restricting the use of the property relative to the uses allowed when the property was acquired by the claimants' family. In 1878 and 1910, the property was not subject to state land use regulations or zoning by Washington County.

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, ORS 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 \$470,000 as the reduction in fair market value as a result of current land use regulations. The claims states:

“We have, on behalf of Mrs. Simpson, engaged a licensed MAI appraiser to assist in determining the amount of compensation due to her pursuant to Measure 37. The compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulations as of the date of written demand for compensation under Measure 37. Based on this preliminary appraisal, the just compensation figure is \$470,000. Mrs. Simpson respectfully demands that this compensation be paid to her pursuant to Measure 37.”

Conclusions

As explained in Section V.(1) of this report, the claimants’ family acquired the property in either 1878 or 1910. Under ORS 197.352, the claimants 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 adopted since the claimants’ family acquired the property restrict the division of the subject property as requested by the claimants. The claimants estimate the reduction in value due to the restrictions to be \$470,000.

Based on the submitted information, the department determines that it is more likely than not 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.

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 allegedly restrict the use of the property relative to what would have been allowed in either 1878 or 1910, when the property was acquired by the claimants’ family. Those provisions that restrict the use of the property primarily include applicable provisions of Statewide Planning Goal 3, ORS 215 and OAR 660, division 33, which Washington County has implemented through its EFU zone. These laws are not exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimants’ family acquired the property.

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 ORS 197.352. 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 ORS 197.352(3)(E).

Laws in effect when the claimants' family acquired the property are exempt under ORS 197.352(3)(E), and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to the claimants' use of the property that have not been identified in the claim. In some cases, it will not be possible to know 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 ORS 197.352(3)(A) to (D).

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

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced 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 property into four parcels (three parcels of approximately two acres each with an existing dwelling and one parcel of approximately 142 acres without a dwelling). The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$470,000. However, the claim provides insufficient documentation to establish how the specified restrictions reduce the fair market value of the property and, therefore, 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, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow the current owners of the property to use it for a use permitted at the time they acquired it.

Anastasia Simpson currently retains a life estate interest in the property. None of the regulations set forth in Section V.(2) of this report that restrict the use of the subject property restrict her life estate interest in the property. As described above, under the terms of her life estate, Anastasia Simpson's interest in the property is limited to continued use of the residence, landscaped area and garden around the house or the access to the house from the county road. Her life estate interest is not restricted by the current land use regulations.

The remaining current owners of the property, Franklin D. and Kimberly Simpson and Robert C. and Suzanne Simpson, acquired the property on July 31, 2001. When they acquired the property, it was subject to Washington County's EFU zoning and the provisions of Statewide Planning Goals 3 (Agricultural Lands) and applicable provisions of ORS 215 and OAR 660, division 33 currently in effect, as described in Section V.(2) of this report.

Conclusion

Based on the record, the department recommends that the claim be denied as to Anastasia Simpson on the basis that no land use regulations restrict her use of her interest in the property; and recommends that the claim approved as to Franklin D. and Kimberly Simpson and Robert C. and Suzanne Simpson, 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 Franklin D. and Kimberly Simpson and Robert C. and Suzanne Simpson's division of the property into four parcels (three parcels of approximately two acres each with an existing dwelling and one parcel of approximately 142 acres without a dwelling): applicable provisions of Statewide Planning Goal 3, ORS 215 and OAR 660, division 33 enacted after July 31, 2001. These land use regulations will not apply to Franklin D. and Kimberly Simpson and Robert C. and Suzanne Simpson's use of their property only to the extent necessary to allow them a use permitted at the time they acquired the property on July 31, 2001. The department acknowledges that the relief to which Franklin D. and Kimberly Simpson and Robert C. and Suzanne Simpson are entitled under ORS 197.352 will not allow them to use the property in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to Franklin D. and Kimberly Simpson and Robert C. and Suzanne Simpson to use their property subject to the standards in effect on July 31, 2001. On July 31, 2001, the property was subject to Statewide Planning Goal 3 (Agricultural Lands) and applicable provisions of ORS 215 and OAR 660, division 33 currently in effect.
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 obtains 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 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 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 property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

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