

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. M118522
(BALLOT MEASURE 37) OF)	
Steven B. Hval, as co-trustee of the)	
Gary L. Hval Family Trust; Arthur A. Lutz;)	
Jolene Ann Segel ¹ , as trustee of)	
the Daniel R. Segel Trust; Linda Gilbaugh; and)	
James H. Gilbaugh Jr. ² , CLAIMANTS)	

Claimants: Steven B. Hval, as co-trustee of the Gary L. Hval Family Trust; Arthur A. Lutz; Jolene Ann Segel, as trustee of the Daniel R. Segel Trust; Linda Gilbaugh; and James H. Gilbaugh Jr. (the Claimants)

Property: Tax lots 100, 101 and 199, Township 1S, Range 2W, Section 16D, 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 Steven B. Hval (as trustee for the Hval Family Trust), Arthur A. Lutz, James Gilbaugh Jr., Linda Gilbaugh, and Jolene Ann Segel (as trustee for the Daniel R. Segel Trust) division of the 44.87-acre property into 448 parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33. These land use regulations will not apply to the claimants only to the extent necessary to allow Steven B. Hval

¹ Also known as Jolene A. Segel.

² Also known as James H. Gilbaugh.

(as trustee for the Hval Family Trust), Arthur A. Lutz , James Gilbaugh Jr., Linda Gilbaugh, and Jolene Ann Segel (as trustee for the Daniel R. Segel Trust) to use the subject property for the use described in this report, and only to the extent that use was permitted when Arthur A. Lutz and James Gilbaugh Jr. acquired the property on June 9, 1973, to the extent that use was permitted when Steven B. Hval (as trustee for the Hval Family Trust) acquired the property on August 29, 1996, to the extent that use was permitted when Linda Gilbaugh acquired an interest in the property on March 2, 1982, and to the extent that use was permitted when Jolene Ann Segel (as trustee for the Daniel R. Segel Trust) acquired an interest in the property on March 10, 1986. The department acknowledges that that the relief to which Steven B. Hval, Linda Gilbaugh, and Jolene Ann Segel are entitled will not allow them to use of the subject property in the manner set forth in their claim.

2. The action by the State of Oregon provides the state's authorization to claimants Steven B. Hval (as trustee of the Hval Family Trust), Arthur A. Lutz, James Gilbaugh Jr., Linda Gilbaugh, and Jolene Ann Segel (as trustee of the Daniel R. Segel Trust) to use the property for the use described in this report, subject to the standards in effect on June 9, 1973, for Arthur A. Lutz and James Gilbaugh Jr., subject to the standards in effect on August 29, 1996, for Steven B. Hval (as trustee of the Hval Family Trust), subject to the standards in effect on March 10, 1986 for Jolene Ann Segel (as trustee of the Daniel R. Segel Trust), and subject to the standards in effect on March 2, 1982 for Linda Gilbaugh.

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.

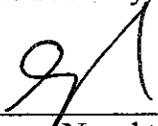
4. Any use of the property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3). Nothing in this report or final order authorizes any public entity to violate the provisions of Oregon Statewide Planning Goal 11.

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:

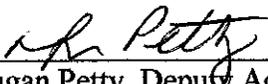
Lane Shetterly, Director



George Naughton, Deputy Director
DLCD

Dated this 11th day of April, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 11th day of April, 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 197.352³, 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.

³ 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.

(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."

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

April 11, 2006

STATE CLAIM NUMBER: M118522

NAMES OF CLAIMANTS: Steven B. Hval, as co-trustee of the Gary L. Hval Family Trust;
Arthur A. Lutz;
Jolene Ann Segel¹, as trustee of the Daniel R. Segel Trust;
Linda Gilbaugh; and
James H. Gilbaugh Jr.²

MAILING ADDRESSES:

Steven B. Hval
120 Southwest Morrison Street, Suite 1500
Portland, Oregon 97204

Arthur A. Lutz
12880 Southwest Glacier Lily Circle
Tigard, Oregon 97223

Jolene Ann Segel
8680 Southwest 155th Avenue
Beaverton, Oregon 97007

Linda Gilbaugh
5028 Southwest View Point Terrace
Portland, Oregon 97239-3958

James H. Gilbaugh Jr.
2902 Southwest Canterbury Lane
Portland, Oregon 97205

PROPERTY IDENTIFICATION: Township 1S, Range 2W, Section 16D
Tax lots 100, 101 and 199
Washington County

OTHER INTEREST IN PROPERTY: Washington County Department of Land Use and Transportation (utility easement)

¹ Also known as Jolene A. Segel.

² Also known as James H. Gilbaugh.

DATE RECEIVED BY DAS:

May 27, 2005

180-DAY DEADLINE:

April 11, 2006³

I. SUMMARY OF CLAIM

The claimants, Steven B. Hval, trustee of the Gary L. Hval Family Trust; Arthur A. Lutz; Jolene Ann Segel, trustee of the Daniel R. Segel Trust; Linda Gilbaugh; and James H. Gilbaugh Jr., seek compensation in the amount of \$20,097,000 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.⁴ The claimants desire compensation or the right to divide the 44.87-acre property into 448 parcels and to develop a dwelling on each parcel. The subject property does not have a street address. It is located near the intersection of River Road with SW Rosa Road in Washington County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid with regard to Steven B. Hval, Arthur A. Lutz and James H. Gilbaugh Jr. and is not valid with regard to Jolene Ann Segel and Linda Gilbaugh because they have not established that they have an ownership interest in the property.

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 claimants Steven B. Hval, Arthur A. Lutz and James H. Gilbaugh Jr.'s division of the 44.87-acre property into 448 parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) chapter 660, division 33. These laws will not apply to the claimants only to the extent necessary to allow Steven B. Hval to use the subject property for the use described in this report only to the extent that use was permitted on August 29, 1996, and only to the extent necessary to allow Arthur A. Lutz and James H. Gilbaugh Jr., to use the property for the use described in this report to the extent that use was permitted on June 9, 1973. The department acknowledges that the relief to which Steven B. Hval is entitled under ORS 197.352 will not allow him to use the subject property in the manner set forth in this claim. (See the complete recommendation in Section VI. of this report.)

³ This date reflects 180 days from the date the claim was submitted as extended by the 139 days all timelines under Measure 37 were suspended during the pendency of the appeal of *MacPherson v. DAS*.

⁴ In comments on the department's draft staff report, one of the claimants asserted that the Hval Trust and the Segel Trust are themselves claimants. The claim form submitted to the department did not list these entities as claimants.

III. COMMENTS ON THE CLAIM

Comments Received

On June 28, 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, four 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 generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of 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 criterion, whichever is later.

Findings of Fact

This claim was submitted to DAS on May 27, 2005, for processing under OAR 125, division 145. The claim identifies Senate Bills 100 and 101, Statewide Planning Goals 3, 11 and 14, ORS 92, ORS 197.225–197.250 and a list of provisions in ORS 215 and OAR 660, 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 December 2, 2004, the effective date of Measure 37, as extended by the 139 days enforcement of the Measure was suspended during the pendency of the *MacPherson v. DAS* appeal, 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.” ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

Gary L. Hval, the father of claimant Steven B. Hval, acquired an interest in the subject property by a land sale contract on June 9, 1973. On December 3, 1990, Gary Hval transferred his interest in the property to the Gary L. Hval Family Trust by a bargain and sale deed, with Gary and his wife, Deanna S. Hval, as the original trustees. According to claimant Steven B. Hval, the Gary L. Hval Trust was revocable. Also according to Mr. Steven Hval, the trust became irrevocable on the date of Gary L. Hval’s death, on July 3, 1991. Claimant, Steven B. Hval, successor trustee of the Gary L. Hval Family Trust, acquired an interest in the subject property on August 29, 1996, when he was apparently appointed co-trustee of the Gary L. Hval Family Trust.⁵

Claimant Arthur A. Lutz acquired an interest in the subject property by a land sale contract on June 9, 1973, doing business as Se-Lu Properties, a joint interest with Daniel R. Segel.⁶

Mr. Segel passed away on November 15, 1985. Mr. Segel’s interest in the subject property passed to the Daniel R. Segel Trust on September 30, 1986 via probate.⁷ Claimant Jolene Ann Segel, the wife of Daniel Segel and trustee of the Daniel R. Segel Trust, acquired an interest in the subject property on March 10, 1986, when she was appointed successor trustee to the original trustee, First National Bank.⁸

Claimant James H. Gilbaugh Jr., along with claimant Arthur Lutz, acquired an interest in the subject property on June 9, 1973, by a land sale contract.

⁵ The record does not contain documentation of this appointment except for a September 22, 2005, letter from Steven Hval to the department staff, which states, “My brother Scott and I were appointed co-trustees on August 29, 1996” (see the letter in the department’s claim file). Scott Hval is not a claimant for the purposes of this claim.

⁶ Arthur A. Lutz and Daniel R. Segel signed the contract on behalf of Se-Lu Properties. See a copy of the contract in the department’s claim file.

⁷ According to a September 2, 2005, letter from Steven Hval to the department staff in the claim file, the claimants’ title company has been unable to locate a copy of this deed.

⁸ Materials submitted by Mr. Steven Hval indicate that Ms. Segel was appointed successor trustee on September 30, 1986.

The claim indicates that claimant Linda Gilbaugh acquired an interest in the subject property on February 4, 1982, through a decree of divorce from claimant James H. Gilbaugh Jr.⁹

The Washington County Assessor's Office confirms that "Arthur A. Lutz, et al" are the current owners of the subject property.

Conclusions

Steven B. Hval, as trustee of the Gary L. Hval Family Trust, is an "owner" of an interest in the subject property as that term is defined by ORS 197.352(11)(C), as of August 29, 1996. Gary L. Hval acquired the subject property on June 9, 1973, and is a "family member" of Steven Hval as that term is defined by ORS 197.532(11)(A).

Arthur A. Lutz and James H. Gilbaugh Jr. are "owners" of an interest in the subject property as that term is defined by ORS 197.352(11)(C), as of June 9, 1973.

Linda Gilbaugh is an owner of an interest in the subject property as that term is defined by Section 11(C) of ORS 197.352, as of March 8, 1982.

Claimant Jolene Ann Segel, as trustee of the Daniel R. Segel Trust, acquired an interest in the subject property on March 10, 1986.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires, in part, that a law must restrict the 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 property into lots at a density of 10 dwelling units per acre. The claim also indicates that the current Washington County zoning, which requires a minimum lot size of 80 acres, prevents them from dividing the subject property.

In addition to the applicable provisions of Goal 3, Goal 14, OAR 660 and ORS 215, the claim summarily cites Goal 11 and ORS 92 and as land use regulations that restrict the use of the claimants' property. Absent an explanation as to how these laws apply to and restrict the use of the claimants' property in a manner that reduces its fair market value, these laws are not addressed further in this report. ORS 92 establishes procedures for subdivisions and partitions. To the extent that ORS 92 could be construed to restrict the use of the subject property, that chapter, in general, was enacted prior to the claimants' acquisition of the property and is, therefore, likely exempt under Section 3(E) of Measure 37.

⁹ Steven Hval's September 22, 2005, letter to the department staff indicates that a title company has been unable to locate a deed. However, material submitted by Steven Hval on March 30 include a Decree of Dissolution, specifying that the Gilbaughs' agreed to divide the interest in Se-Lu, Hval, Rohrback, Gilbaugh Joint Venture.

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 OAR 660, division 33, and ORS 215 because the claimants' property is "agricultural land" as defined by Goal 3.¹⁰ 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.

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 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 on 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.

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 under ORS 215.213.¹¹ OAR 660-033-0130(4)(e) (applicable to non-farm dwellings in marginal lands counties) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective January 1, 2002), which became effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Goal 14 (Urbanization) would likely apply to the division of the claimants' property into lots or parcels smaller than two acres in size. Goal 14 became effective on January 25, 1975, and generally requires that land outside of Urban Growth Boundaries be used for rural uses.

Claimants Arthur A. Lutz and James H. Gilbaugh Jr. and the Hval family acquired an interest in the subject property on June 9, 1973. At that time, Goal 3 and the administrative rules were not in effect. Provisions of ORS 215 were adopted in 1963. On June 9, 1973, the subject property was zoned F-1 by Washington County pursuant to ORS 215. The F-1 zone did not have a minimum lot size, and it allowed single-family dwellings, by right, for owners, operators or help in conjunction with a farm use.¹² It is unclear that Washington County would approve division of the subject property into lots smaller than two acres under the F-1 zoning.¹³

¹⁰ The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

¹¹ The subject property is composed of "high-value farmland" soils. (See Soil Survey of Washington County, USDA Soil Conservation Service, July 1982, sheet 37, pages 11, 22, 42 and 43.)

¹² See the August 16, 2005, Washington County Measure 37 Recommendation and Staff Report (a copy is in the department's claim file).

¹³ See the August 16, 2005, Washington County Measure 37 Recommendation and Staff Report (a copy is in the department's claim file).

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goals 3 and 14, ORS 215 and OAR 660, division 33, were enacted or adopted after the Hval family and claimants Arthur A. Lutz and James Gilbaugh Jr. acquired the subject property in 1973 and do not allow the desired division or residential development of the property. These laws restrict the use of the subject property relative to the uses allowed when the claimants acquired the property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352 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 \$20,097,000 as the reduction in the subject property's fair market value due to current regulations. This amount is based on the subject property's current assessed value of \$153,000,¹⁴ subtracted from a potential total value of \$20,250,000 for approximately 45 acres of land worth \$450,000 per acre if developed at 10 units per acre. The claim includes no appraisal to substantiate the amount demanded for compensation. It is unlikely that the level of development used to estimate market value would have been permitted at the time some of the claimants acquired an interest in the property. Nevertheless, the department concurs that the cited land use regulations restrict the use of the property to a greater degree than that allowed in 1973.

Conclusions

As explained in Section V.(1) of this report, the claimants are Steven B. Hval, whose family acquired interest in the subject property on June 9, 1973, and Arthur A. Lutz and James H. Gilbaugh Jr. who acquired the property on June 9, 1973. Under ORS 197.352, the Hval family and claimants Arthur A. Lutz and James H. Gilbaugh Jr. 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 Hval family and claimants Arthur A. Lutz and James H. Gilbaugh Jr. acquired the subject property restrict the desired division and development of the property. The claimants estimate the reduction in value due to the restrictions to be \$20,097,000.

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.

¹⁴ Washington County Assessor records show a current real market value of \$475,700 for the subject property: \$275,000 for tax lot 100, \$197,400 for tax lot 101 and \$3,300 for tax lot 199. See correspondence with the department staff in the claim file.

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.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including Goals 3, 11 and 14, certain statutes in ORS 215 and OAR 660, division 33, which Washington County has implemented through its current EFU zone. Most of these land use regulations were enacted or adopted after the Hval family and claimants Arthur A. Lutz and James H. Gilbaugh Jr. acquired the subject property on June 9, 1973, with the exception of certain provisions of ORS 215.213 and 215.263.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that 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(3). It appears that none of the general statutory, goal and rule restrictions on residential development were in effect when the Hval family and claimants Arthur A. Lutz and James H. Gilbaugh Jr. acquired the subject property in 1973. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the Hval family and the claimants acquired the subject 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 subject property that have not been identified in the claim. In some cases, it will not be possible to know which 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. In some cases, some of these laws may be exempt under ORS 197.352(3)(A)-(D).

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.

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 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 44.87-acre property into 448 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 \$20,097,000. However, because the claim does not provide an appraisal or other specific documentation for how the specified restrictions reduce the fair market value of the 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 Arthur A. Lutz and James H. Gilbaugh Jr. to use the subject property for a use permitted at the time they acquired an interest in the property on June 9, 1973; to allow Steven B. Hval (as trustee for the Hval Family Trust) to use the property for a use permitted at the time he acquired an interest in the property on August 29, 1996; to allow Linda Gilbaugh to use the property for a use permitted at the time she acquired an interest in the property on March 8, 1982; and to allow Jolene Ann Segel (as trustee of the Daniel R. Segel Trust) to use the property for a use permitted at the time she acquired an interest in the property on March 10, 1986.

At the time Steven B. Hval (as trustee for the Hval Family Trust), Linda Gilbaugh, and Jolene Ann Segel (as trustee of the Daniel R. Segel Trust) acquired their interests in the subject property, it was zoned EFU by Washington County and subject to the lot size and dwelling standards under Goals 3 and 14, ORS 215 and OAR 660, division 33, in effect in 1996, 1982 and 1986 (respectively) 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. There may be other laws that currently apply to the claimants' use of the subject 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 which 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.

Conclusions

Based on the record, the department further recommends that the claim be approved with regard to Steven B. Hval (as trustee for the Hval Family Trust), Arthur A. Lutz Jr., James H. Gilbaugh, Linda Gilbaugh, and Jolene Ann Segel (as trustee for the Daniel R. Segel Trust), 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 Steven B. Hval (as trustee for the Hval Family Trust), Arthur A. Lutz, James Gilbaugh Jr., Linda Gilbaugh, and Jolene Ann Segel (as trustee for the Daniel R. Segel Trust) division of the 44.87-acre property into 448 parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33. These land use regulations will not apply to the claimants only to the extent necessary to allow Steven B. Hval (as trustee for the Hval Family Trust), Arthur A. Lutz, James Gilbaugh Jr., Linda Gilbaugh, and Jolene Ann Segel (as trustee for the Daniel R. Segel Trust) to use the subject property for the use described in this report, and only to the extent that use was permitted when Arthur A. Lutz and James Gilbaugh Jr. acquired the property on June 9, 1973, to the extent that use was permitted when Steven B. Hval (as trustee for the Hval Family Trust) acquired the property on August 29, 1996, to the extent that use was permitted when Linda Gilbaugh acquired an interest in the property on March 2, 1982, and to the extent that use was permitted when Jolene Ann Segel (as trustee for the Daniel R. Segel Trust) acquired an interest in the property on March 10, 1986. The department acknowledges that that the relief to which Steven B. Hval, Linda Gilbaugh, and Jolene Ann Segel are entitled will not allow them to use of the subject property in the manner set forth in their claim.
2. The action by the State of Oregon provides the state's authorization to claimants Steven B. Hval (as trustee of the Hval Family Trust), Arthur A. Lutz, James Gilbaugh Jr., Linda Gilbaugh, and Jolene Ann Segel (as trustee of the Daniel R. Segel Trust) to use the property for the use described in this report, subject to the standards in effect on June 9, 1973, for Arthur A. Lutz and James Gilbaugh Jr., subject to the standards in effect on August 29, 1996, for Steven B. Hval (as trustee of the Hval Family Trust), subject to the standards in effect on March 10, 1986 for Jolene Ann Segel (as trustee of the Daniel R. Segel Trust), and subject to the standards in effect on March 2, 1982 for Linda Gilbaugh.
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). Nothing in this report or final order authorizes any public entity to violate the provisions of Oregon Statewide Planning Goal 11.

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 March 14, 2006. 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.