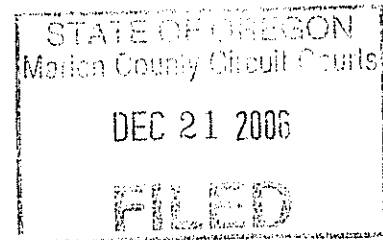


STATE OF OREGON  
MARION COUNTY COURTS

DEC 22 2006

ENTERED #8



IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

EDWARD H. AND RUTH J. NASH,  
husband and wife;

Claimants-Plaintiffs,

v.

STATE OF OREGON, by and through  
DEPARTMENT OF ADMINISTRATIVE  
SERVICES; DEPARTMENT OF LAND  
CONSERVATION AND DEVELOPMENT  
AND LAND CONSERVATION AND  
DEVELOPMENT COMMISSION,

Respondents-Defendants.

Case No. 06C-16920

GENERAL JUDGMENT ON CROSS  
MOTIONS FOR SUMMARY JUDGMENT  
AND MONEY AWARD

This matter having come before the Court on Claimants-Plaintiffs' (hereinafter "Nash") Motion for Summary Judgment, and Respondents-Defendants' (hereinafter "State") Cross Motion for Summary Judgment. On November 21, 2006, the Court heard arguments on behalf of Nash by and through their attorney, David Hilgemann, and on behalf of the State by and through its attorney, Erika Hadlock, and the Court having also reviewed the pleadings, memoranda, affidavits, and other submissions on behalf of the parties,

At the conclusion of oral arguments, the Court ruled in favor of the Nashes and granted their Motion for Summary Judgment and denied the State's Cross-Motion for Summary

Page 1 - GENERAL JUDGMENT ON CROSS MOTIONS FOR SUMMARY JUDGMENT  
AND MONEY AWARD

Law Offices of David Hilgemann  
The Equitable Center, Suite 700 • 530 Center St. N.E.  
Salem, Oregon 97301-3740  
Telephone (503) 585-2236 • FAX No. (503) 585-1006  
E-mail: hilged@dhilgemannlaw.com

1 Judgment.

2 NOW, THEREFORE, the Court finds that:

- 3 1. Nash acquired fee title to the subject real property on February 6, 1957.
- 4 2. On December 27, 2002, Nash entered into a Contract of Sale with their  
5 grandson, Byron E. Williams (hereinafter “Williams”). A Memorandum of  
6 Contract of Sale was recorded with the Marion County Recorder’s Office on  
7 January 2, 2003. Pursuant to the terms of the Contract between Nash and  
8 Williams, Nash retained legal title to the subject property until the balance of the  
9 contract was to be paid in full. The balance of the contract has not been paid in  
10 full and is not required to be until January 1, 2008.
- 11 3. On or about July 21, 2005, Nash and Williams jointly filed a Measure 37 Claim  
12 pursuant to ORS 197.352.
- 13 4. On June 1, 2006, the State issued a Final Order No. M121521. The Final Order  
14 incorporated the Draft Staff Report issued on May 15, 2006, by the State and  
15 denied the Nashes claim for relief under Measure 37. The Nashes were held to  
16 not be “owners” as defined by ORS 197.352 and were denied relief.
- 17 5. Nashes are “owners” of the subject real property as defined by ORS  
18 197.352(11)(C).
- 19 6. The State’s decision in Final Order No. M121521, denying the claim of the  
20 Nashes on the basis that they were not an “owner” of the subject property as  
21 defined by ORS 197.352(11)(C) is erroneous, and is thereby modified and

1 amended to reflect the Court's ruling.

2 Now, therefore,

3 IT IS HEREBY ADJUDGED that Nashes' Motion for Summary Judgment against the  
4 State is GRANTED, and the State's Cross Motion for Summary Judgment is DENIED.

5 IT IS HEREBY FURTHER ADJUDGED that the State's Order number M121521 is  
6 amended and modified as follows:

- 7 1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply  
8 the following laws to the Nashes' division of the 23.42 acre property into two  
9 parcels or to their development of a dwelling on each parcel: applicable  
10 provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted  
11 after February 6, 1957. In addition, the State of Oregon will not apply the  
12 following laws to Byron Williams' division of the 23.42-acre property into two  
13 parcels or to their development of a dwelling on each parcel: applicable  
14 provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted  
15 after December 27, 2002.
- 16 2. The action by the State of Oregon provides the state's authorization to the  
17 Nashes to use the property subject to any standards in effect on February 6,  
18 1957, and the state's authorization to Byron Williams to use the property subject  
19 to the standards in effect on December 27, 2002. On December 27, 2002, the  
20 property was subject to applicable provisions of Goal 3, ORS 215 and OAR 660,  
21 division 33, currently in effect.

- 1           3.     To the extent that any law, order, deed, agreement or other legally enforceable  
2                     public or private requirement provides that the subject property may not be used  
3                     without a permit, license or other form of authorization or consent, the order will  
4                     not authorize the use of the property unless claimants first obtain that permit,  
5                     license or other form of authorization or consent. Such requirements may  
6                     include, but are not limited to: a building permit, a land use decision, a "permit"  
7                     as defined in ORS 215.402 or 227.160, other permits or authorizations from  
8                     local, state or federal agencies and restrictions on the use of the subject property  
9                     imposed by private parties.
- 10          4.     Any use of the subject property by claimants under the terms of the order will  
11                     remain subject to the following laws: (a) those laws not specified in (1) above;  
12                     (b) any laws enacted or enforced by a public entity other than the Commission  
13                     or the department; and (c) those laws not subject to ORS 197.352 including,  
14                     without limitation, those laws exempted under ORS 197.352(3).
- 15          5.     Without limiting the generality of the foregoing terms and conditions, in order  
16                     for claimants to use the subject property, it may be necessary for them to obtain  
17                     a decision under ORS 197.352 from a city and/or county and/or metropolitan  
18                     service district that enforces land use regulations applicable to the property.  
19                     Nothing in this order relieves claimants from the necessity of obtaining a  
20                     decision under ORS 197.352 from a local public entity that has jurisdiction to  
21                     enforce a land use regulation applicable to their use of the subject property.

1 IT IS HEREBY FURTHER ADJUDGED that Nashes may submit to the Court a request  
2 for an award of their attorney fees, costs and disbursements incurred herein pursuant to ORS  
3 183.497 and ORCP 68, to be awarded upon the discretion of the Court and by supplemental  
4 judgment.

5 \* \* \* \* \*

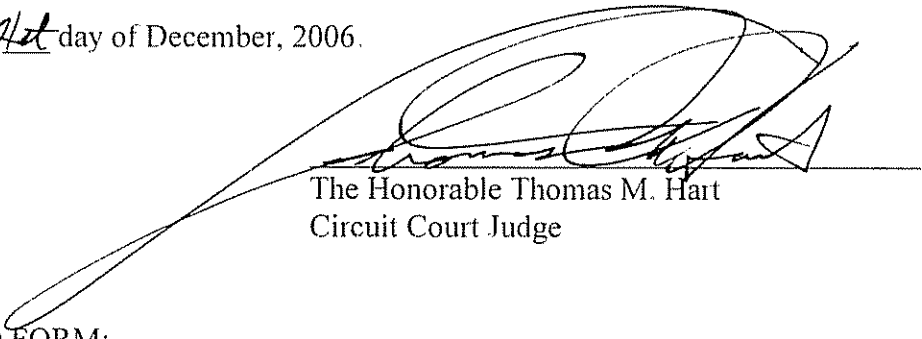
6  
7 **MONEY JUDGMENT**

8  
9 Judgment Creditors: Edward and Ruth Nash  
10 2011 Quail Run Avenue, Stayton, OR 97383  
11  
12 Judgment Creditors'  
13 Attorney: Christopher B. Matheny  
14 Law Offices of David Hilgemann  
15 530 Center St. NE, Suite 700, Salem, OR 97301-3740  
16  
17 Judgment Debtor: Department of Administrative Services; Department of  
18 Land Conservation and Development and Land  
19 Conservation and Development Commission  
20  
21 Person or Public Body  
22 entitled to any portion of  
23 the judgment: None  
24  
25 Amount of Judgment:  
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27 Principal Amount: None  
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29 Prejudgment interest: None  
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31 Post Judgment interest: 9% per annum from date of entry of judgment until  
32 paid in full, on Attorney Fees and on Costs and  
33 Disbursements.  
34  
35 Court Costs and  
36 Disbursements: To be determined pursuant to ORCP 68 and ORS  
37 183.497  
38 ////

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Attorney fees: To be determined pursuant to ORCP 68 and ORS 183.497

DATED this 7<sup>th</sup> day of December, 2006.



The Honorable Thomas M. Hart  
Circuit Court Judge

APPROVED AS TO FORM:

Paula Sunde - AAG  
Erika Hadlock, OSB #91297 82407  
Attorney for Defendants

SUBMITTED BY:  
Law Offices of David Hilgemann  
Christopher B. Matheny, OSB 02384  
Attorneys for Claimants-Plaintiffs