

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

IN THE MATTER OF THE CLAIM ) FINAL ORDER  
FOR COMPENSATION UNDER ) CLAIM NO. M 118326  
BALLOT MEASURE 37 (CHAPTER 1, )  
OREGON LAWS 2005) OF )  
Margaret E. Dennis, CLAIMANT )

Claimant: Margaret E. Dennis (the Claimant)

Property: Tax Lot 100, T.3S, R.1E, Section 6C, W.M., Clackamas County

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 Ballot Measure 37 (2004) (Oregon Laws 2005, Chapter 1) (hereafter, Measure 37). 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 Measure 37, the State of Oregon will not apply the following laws to Margaret Dennis' division and development of the 30-acre property: applicable provisions of Statewide Planning Goal 3, Goal 14, ORS 215, and OAR 660, division 33, enacted after April 16, 1979. These land use regulations will not apply to Margaret Dennis' use of her property only to the extent necessary to allow the claimant a use permitted at the time she acquired the property on April 16, 1979.
2. The action by the State of Oregon provides the state's authorization to the claimant to use her property subject to the standards in effect on April 16, 1979. On that date, the property was subject to Statewide Planning Goal 3, Goal 14 and the applicable provisions of ORS 215 then 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 claimant 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 claimant 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 Measure 37 including, without limitation, those laws exempted under Section (3) of the Measure.

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for her to obtain a decision under Measure 37, 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 claimant from the necessity of obtaining a decision under Measure 37, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

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 Measure 37, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under Measure 37, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION  
AND DEVELOPMENT COMMISSION:

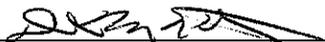
Lane Shetterly, Director



George Naughton, Deputy Director  
DLCD

Dated this 6<sup>th</sup> day of October, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:



David Hartwig, Administrator  
DAS, State Services Division

Dated this 6<sup>th</sup> day of October, 2005.

## **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 293.316: Judicial review under ORS 293.316 may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review under ORS 293.316 is pursuant to the provisions of ORS 183.482 to the Court of Appeals.
2. 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 and the Circuit Court in the county in which you reside.
3. A cause of action under Oregon Laws 2005, chapter 1 (Measure 37 (2004)): A present owner of the property, or any interest therein, may file a cause of action in the Circuit Court for the county where the property is located, if a land use regulation continues to apply to the subject property more than 180 days after the present owner made a written demand for compensation.

(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.”

**BALLOT MEASURE 37 (CHAPTER 1, OREGON LAWS 2005)  
CLAIM FOR COMPENSATION**

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

October 6, 2005

**STATE CLAIM NUMBER:** M118326

**NAME OF CLAIMANT:** Margaret E. Dennis

**MAILING ADDRESS:** 25006 SW Gage Road  
Wilsonville, Oregon 97070

**PROPERTY IDENTIFICATION:** Township 3S, Range 1E, Section 6C  
Tax Lot 100  
Clackamas County

**OTHER CONTACT INFORMATION:** William C. Cox  
244 SW California Street  
Portland, Oregon 97219

**DATE RECEIVED BY DAS:** April 18, 2005

**180-DAY DEADLINE:** October 15, 2005

**I. SUMMARY OF CLAIM**

The claimant, Margaret E. Dennis, seeks compensation in the amount of \$6,534,000 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 claimant desires compensation or the right to divide the 30.13-acre property into approximately 20,000 square foot lots and to develop a dwelling on each lot. The property is located at 25006 SW Gage Road north of the City of Wilsonville, in Clackamas County. (See claim.)

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. 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 Margaret Dennis's division of the property for residential development:

applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), Goal 14 (Urbanization), ORS 215 and OAR 660, division 33, enacted after April 16, 1979. These laws will not apply to the claimant only to the extent necessary to allow Margaret Dennis a use of the property permitted at the time she acquired it on April 16, 1979. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On May 11, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, two written comments were received in response to the 10-day notice.

One of the comments does not address whether the claim meets the criteria for relief (compensation or waiver) under Measure 37. Comments concerning the effects a use of the property may have on surrounding areas generally are 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 waiving a state law.

The other comment is relevant to whether the restriction of the claimant's 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 comment letters in the department's claim file.)

### **IV. TIMELINESS OF CLAIM**

#### **Requirement**

Ballot Measure 37, Section 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.

### **Findings of Fact**

This claim was submitted to DAS on April 18, 2005, for processing under OAR 125, division 145. The claim identifies all statewide planning goals, administrative rules and statutes adopted and enforced since the claimant purchased the property (specifically Statewide Planning Goals 3 and 5 and OAR 660, divisions 16, 23 and 33) and Clackamas County's Exclusive Farm Use (EFU) Zone, as law that restricts the use of the property and are the basis for the claim. 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**

Ballot Measure 37 provides for payment of compensation or relief from specific laws for "owners" as that term is defined in the Measure. Ballot Measure 37, Section 11(C) defines "owner" as "the present owner of the property, or any interest therein."

### **Findings of Fact**

The claimant, Margaret Dennis, acquired an interest in the subject property on April 16, 1979, by Warranty Deed Creating an Estate by the Entirety with her husband, W. Dale Dennis (also known as William D. Dennis) (Clackamas County Deed Records 79 15287). W. Dale Dennis and Dallas Dennis acquired the property on March 31, 1969 by a Contract of Sale (Clackamas County Deed Records 69 6093). On December 30, 1978, the interest that Dallas Dennis had in the property was transferred to William D. Dennis (Clackamas County Deed Records 79-462).

A copy of a Title Report, dated March 28, 2005, indicates that the last deed of record runs to William and Margaret Dennis. Recent Clackamas County Tax Records for the property indicate that William and Margaret Dennis are the current owners of the subject property. However, a Statutory Quitclaim Deed, dated January 28, 2005, transferred William Dennis's interest in the subject property to the claimant, Margaret Dennis (Clackamas County Deed Records 2005-007942).

## **Conclusions**

The claimant, Margaret Dennis, is an “owner” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37. Margaret Dennis acquired the subject property on April 16, 1979. W. Dale Dennis is a family member of Margaret Dennis, as that term is defined by Section 11(A) of Measure 37. W. Dale Dennis acquired an interest in the property as of March 31, 1969.

## **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 claimant’s 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 claimant or a family member acquired the property.

## **Findings of Fact**

For each of the regulations cited, the claim provides the following statements as to how land use laws restrict the use of the property:

OAR 660, division 33: “Reduces density allowed on subject property.”

Goal 5 and OAR 660, division 16 and 23: “At this time applicant is not aware of resources located on the site which have been designated Goal 5 resources.”

County EFU: “At time of purchase the property was zoned GU by the County (Zoning Code Section 21.3). At time of purchase the GU zone designation allowed 20,000 square foot lots. On 6/18/79 Zoning Code Section 21.3 and the GU designation was replaced by EFU.”

All statewide planning goals and administrative rules adopted and enforced since purchase of property by claimant: “This is a catch all notice provision since land use laws are so complex and intertwined they are many times indistinguishable for precise specification.”<sup>1</sup>

Statewide Planning Goal 3 and OAR 660-033-010-All: “These provisions limit land divisions, restrict placement of dwellings, uses of EFU land.”

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<sup>1</sup> Other Statewide Planning Goals (Goals 1, 2, 4, 6, through 12, and 15 through 19) are identified in the claim but do not, on their face, appear to restrict the use of the property. In the absence of any explanation by the claimant as to how these goals restrict the use of the property, this report does not address those regulations.

Statewide Planning Goals 3 and Goal 14, ORS 215 and OAR 660, division 33, apply to the subject property. Statewide Planning Goal 5 and OAR 660, divisions 16 and 23, do not apply to the subject property.<sup>2</sup>

The claim is based on Clackamas County's current Agricultural Plan designation and EFU zoning and the applicable provisions of state law that require such zoning. The claimant's property is zoned EFU as required by Statewide Planning Goal 3 in accord with OAR 660, division 33, and ORS 215 because the claimant's property is "Agricultural Land" as defined by Goal 3.<sup>3</sup> 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. The subject 30 acres cannot be further divided and is not entitled to a non-farm dwelling under the current requirements of Goal 3, ORS 215.263, 215.780 and OAR 660-033-010.<sup>4</sup>

Current land use regulations, particularly ORS 215.263, 215.284, 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 parcel(s) 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.

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 215.283(1)(f).

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<sup>2</sup> It appears that Clackamas County has applied a River and Stream Conservation Area (RSCA) plan designation to a drainage way located along the eastern portion of the subject property ((Clackamas County Comprehensive Plan, Section 3-Natural Resources, and Policy 12). Section 704 of the Zoning Ordinance applies to all primary and accessory structures exceeding 120 square feet or 10 feet in height and requires a 50-foot setback from the mean high water line of a stream identified in the Plan. This is not a state land use requirement and is not addressed in this review.

<sup>3</sup> The claimant's property is "Agricultural Land" because it contains predominately NRCS (Natural Resources Conservation Service) Class II and III Agricultural Soils. Property is located on Soils Sheet #13. Soil map Units 69 (Pit), 78C (Witzel), 78C (Saum silt loam), and Woodburn silt loam (91B and 91C) are found on pages 89, 97, and 110, 112, and 113 (Soil Survey of Clackamas County, November 1985).

<sup>4</sup> The minimum parcel size for the creation of new farm parcels is 80 acres (ORS 215.780). Because the property is located in the Willamette Valley, under ORS 215.263(4) it cannot be divided to allow a non-farm dwelling. The subject property is also not eligible for a non-farm dwelling under ORS 215.284(1) because the property is composed of predominately Class II and III agricultural soils. Property located on Sheet #13. Soil map units 69 (Pit), 78C (Witzel), 78C (Saum silt loam) and Woodburn silt loam (91B and 91C) are found on pages 89, 97, and 110, 112, and 113 respectively of Soil Survey of Clackamas County, November 1985.

OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. Subsequent amendments to comply with HB 3326, (Chapter 704, Oregon Laws 2001, and effective January 1, 2002,) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

Statewide Planning Goal 14 would apply to the claimant's desire to divide the property into lots or parcels two-acres or less in size. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses and also became effective on January 25, 1975.

The Dennis family acquired the subject property on March 31, 1969, prior to the establishment of the statewide planning goals and their implementing rules and statutes. In 1969, the property was subject to the requirements of the Clackamas County's General Use (GU) zone.

### **Conclusions**

The zoning requirements, minimum 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 Dennis family acquired interest in the subject property in March 1969, and do not allow the division of the property, thereby restricting the use of the property relative to the uses allowed when interest in the property was acquired by the Dennis family in 1969.

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 claimant has identified. There may be other laws that currently apply to the claimant's use of the property, and that may continue to apply to the claimant's 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 claimant seeks 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, Section 1 of Ballot Measure 37 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 \$6,534,000 as the reduction in the property's fair market value as a result of current regulations. This amount is based on the claimant's estimate of the market value of dividing the subject 30-acres into approximately 20,000 square foot lots and estimating each approximately 20,000 square foot lot to have an average per-development real market value of \$100,000.<sup>5</sup>

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<sup>5</sup> The claim states that, at the time of purchase (April 1979), the 30-acres could have been divided into 65.34 20,000 square foot lots.

## **Conclusions**

As explained in Section V.(1) of this report, the current owner is Margaret Dennis, whose family acquired interest in the property on March 31, 1969. Under Ballot Measure 37, Margaret Dennis is 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 claimant's family acquired interest in the property restrict division and development of the subject property. The claimant estimates the reduction in value due to the restrictions to be \$6,534,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. Nevertheless, 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 Section 3 of Measure 37**

Ballot Measure 37 does not apply to certain land use regulations. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

### **Findings of Fact**

The claim is based on state land use regulations that restrict the use of the property relative to what would have been allowed in 1969, when the claimant's family acquired the property. These provisions include Statewide Planning Goal 3 (Agricultural Lands) and applicable provisions of ORS 215 and OAR 660, division 33, which Clackamas County has implemented through its EFU zone. These laws are not exempt under Section 3(E) of Measure 37, which exempts laws in effect when the claimant's 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 Measure 37. It does appear that the general statutory, goal and rule restrictions on farm land apply to the claimant's use of the property. To the extent that these laws were enacted after the claimant's family acquired the subject property, these laws are exempt under Section 3(E) of Measure 37.

Laws in effect when the claimant's family acquired the property are exempt under Section 3(E) of Measure 37, and will continue to apply to the claimant's use of the property. There may be other laws that continue to apply to the claimant's 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 claimant seeks 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 subsections 3(A) to 3(D) of Measure 37.

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 claimant has identified. Similarly, this report only addresses the exemptions provided for under Section (3) of Measure 37 that are clearly applicable given the information provided to the department in the claim. The claimant should be aware that the less information she has provided to the department in her claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to her use of the property.

## **VI. FORM OF RELIEF**

Section 1 of Measure 37 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 subject property into approximately 20,000 square foot parcels or lots and the development of residential dwelling on each new lot or parcel. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$6,534,000. However, because the claim does not provide an appraisal or other specific documentation to establish how the specified restrictions reduce the fair market value of the 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 property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Margaret Dennis to use the subject property for a use permitted at the time she acquired the property on April 16, 1979.

The claimant acquired the subject property after the adoption of the Statewide Planning Goals, but before Clackamas County's comprehensive plan and land use ordinances were acknowledged by the Commission to be in compliance with the Goals. On April 16, 1979, the property was zoned by Clackamas County as GU, which had a 20,000 square foot minimum lot size for the

creation of new lots or parcels. However, because that zone was not acknowledged under the standards for state approval of local comprehensive plans and land use regulations pursuant to ORS 197.250 and 197.251, the Statewide Planning Goals, specifically Goal 3, applied directly to the subject property at that time.<sup>6</sup>

As adopted in 1975, Statewide Goal 3 (Agricultural Lands) required that agricultural land “be preserved and zoned for EFU pursuant to ORS 215.” The subject property is agricultural land as defined by Goal 3 and was subject to EFU zoning pursuant to ORS 215 when acquired by the claimant in 1979.<sup>7</sup> At that time, the Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that are “appropriate for the continuation of the existing commercial agricultural enterprise in the area” (Statewide Planning Goal 3). Further, ORS 215.263 (1979 edition) required that all divisions of land subject to the provisions for EFU zoning, comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the opportunity to divide the subject property when the claimant acquired it in 1979, was limited to land divisions done consistent with Goal 3 that required the resulting parcels to be: (1) appropriate for the continuation of the existing commercial agricultural enterprise in the areas;” and (2) shown to comply with the legislative intent set forth in ORS 215.263. (See Endnote.<sup>1</sup>)

As for the dwellings allowed under EFU zoning as required by Goal 3 on the dates of acquisition in 1979, farm dwellings were allowed if determined to be “customarily provided in conjunction with farm use” under ORS 215.215(1)(d) (1977 edition). Non-farm dwellings were subject to ORS 215.213(3) (1977 edition).

No information has been presented in the claim to show that the potential approximately 20,000 square foot lot development cited by the claimant complies with the “commercial” standard for farm parcels under Goal 3 or the standards for non-farm parcels under ORS 215.263 (1977 Edition).

## **Conclusion**

Based on the record, the department recommends that the claim be approved, subject to the following terms:

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<sup>6</sup> Statewide Planning Goal 3 became effective on January 25, 1975, and was applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of the Clackamas County's EFU-20 and GAD (General Agriculture District) zones on December 31, 1981. See *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 569 (1977), *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978), *Jurgenson v. Union County*, 42 Or App 505 (1979), and *Alexanderson v. Polk County*, 289 Or 427, *rev den* 290 Or 137 (1980)). After the County's plan and land use regulations were acknowledged by LCDC, the Statewide Planning Goals and implementing rules no longer directly applied to such local land use decisions (*Byrd v. Stringer*, 295 Or 311 (1983)).

<sup>7</sup> According to the claim, the subject property was zoned GU until it was ultimately rezoned to EFU. On December 11, 1981, the Commission determined that County's revised EFU Zone complied with Goal 3 because the County included the proper standards for land divisions. (See Commission Continuance Order, December 31, 1981, Department of Land Conservation and Development October 23, 1981, Report, pp. 9-13.)

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Margaret Dennis' division and development of the 30-acre property: applicable provisions of Statewide Planning Goal 3, Goal 14, ORS 215, and OAR 660, division 33, enacted after April 16, 1979. These land use regulations will not apply to Margaret Dennis' use of her property only to the extent necessary to allow the claimant a use permitted at the time she acquired the property on April 16, 1979.
2. The action by the State of Oregon provides the state's authorization to the claimant to use her property subject to the standards in effect on April 16, 1979. On that date, the property was subject to Statewide Planning Goal 3, Goal 14 and the applicable provisions of ORS 215 then 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 claimant 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 claimant 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 Measure 37 including, without limitation, those laws exempted under Section (3) of the Measure.
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for her to obtain a decision under Measure 37, 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 claimant from the necessity of obtaining a decision under Measure 37, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

## VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on September 21, 2005. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.

### Endnote:

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<sup>1</sup> The Goal 3 standard for the review of land divisions or the establishment of a minimum lot size states:

“Such minimum lot sizes as are utilized for any farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprise within the area.”

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On August 20, 1977, the Commission distributed a policy paper explaining the meaning of the Goal 3 minimum lots size standard (see "Common Questions about Goal #3; Agricultural Lands" (August 30, 1977, as revised and added to July 12, 1979). Further interpretation of the Goal 3 minimum lot size standard can be found in *Meeker v Clatsop County*, 287 Or 665 (1979), *Jurgenson v. Union County*, 42 Or App 505 (1979), *Alexanderson v. Polk County*, 289 Or 427, *rev den* 290 Or 137 (1980) and *Thede v. Polk County*, 3 Or LUBA 336 (1981).

In 1982, the policy paper and court decisions were incorporated into an administrative rule to guide the interpretation and application of the Goal 3 minimum lot size standard (see OAR 660, division 05, specifically rules -015 and -020 effective July 21, 1982).

For further guidance on the interpretation and application of this standard and rule see *Kenagy v. Benton County*, 6 Or LUBA 93 (1982); *Goracke v. Benton County*, 8 Or LUBA 128 (1983); 68 Or App 83 (1984); 12 Or LUBA 128 (1984); 13 Or LUBA 146 (1985); 74 Or App 453 (1985) *rev den* 300 Or 322 (1985); and OAR 660-05-015 and -020, as amended, effective June 7, 1986 (repealed effective August 7, 1993).

The 1982 administrative rule (OAR 660-05-015 and -020) was further amended to incorporate the holdings of these cases (effective June 7, 1986 and repealed effective August 7, 1993).