

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 COMPENSATION UNDER)
BALLOT MEASURE 37 (CHAPTER 1,)
OREGON LAWS 2005) OF)
Robert Benton, CLAIMANT)

FINAL ORDER
CLAIM NO. M118372

Claimant: Robert Benton (the Claimant)

Property: Tax Lots 102 and 103, T.2N, R.10E, Section 11, W.M., Hood River County

Claim: The demand for compensation and any supporting information received from the Claimants 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 Robert Benton's division and development of the 19.11-acre property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), Goal 14 (Urbanization), ORS 215.263, 215.284, 215.780, and OAR 660, division 33, enacted after December 30, 1976. These land use regulations will not apply to Robert Benton's use of his property only to the extent necessary to allow him a use permitted at the time he acquired the property on December 30, 1976. It is unlikely that the claimant's desired level of development would have been allowed under standards in effect in 1976.
2. The action by the State of Oregon provides the state's authorization to the claimant to use his property subject to the standards in effect on December 30, 1976. On that date, the property was subject to the applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), Goal 14 (Urbanization) and 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 him 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:

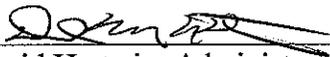
Lane Shetterly, Director



George Naughton, Deputy Director
DLCD

Dated this 12th day of October, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



David Hartwig, Administrator
DAS, State Services Division

Dated this 12th 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 12, 2005

STATE CLAIM NUMBER: M118372

NAME OF CLAIMANT: Robert S. Benton

MAILING ADDRESS: Not Provided

PROPERTY IDENTIFICATION: Township 2N, Range 10E, Section 11C
Tax Lots 102 and 103
Hood River County

OTHER CONTACT INFORMATION: Donald Joe Willis
Schwabe, Williamson and Wyatt
354 SW Upper Terrace Drive, Suite 101
Bend Oregon 97702

DATE RECEIVED BY DAS: April 22, 2005

180-DAY DEADLINE: October 19, 2005

I. SUMMARY OF CLAIM

The claimant, Robert S. Benton, seeks compensation in the amount of \$2,740,680 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 partition the 19.11-acre property into 20-to 40 parcels of various sizes for residential use. The property does not have a street address and is located at Township 2N, Range 10E, Section 11C, near Hood River, in Hood River County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is 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 Robert Benton's division of the property for residential

development: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization), ORS 215 and OAR 660, division 33, enacted after December 30, 1976. These laws will not apply to the claimant only to the extent necessary to allow Robert Benton a use of the property permitted at the time he acquired it in 1976. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On May 19, 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 was received in response to the 10-day notice.

The 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 the comment letter 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 22, 2005, for processing under OAR 125, division 145. The claim includes a list of all Commission administrative rules, ORS 92 and the exclusive farm use provisions of ORS 215 as laws 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 claim includes two tax lots (102 and 103) and asserts that Robert Benton’s grandfather, Charles King Benton, acquired these tax lots on May 5, 1919, and that they were acquired by the claimant on December 30, 1976. No deeds have been provided to substantiate that ownership. The Hood River County staff report for this claim verifies the claimant’s acquisition date in 1976, based on a title report dated March 1, 2005 submitted to the County and the County’s deed records. The County has provided a copy of the title report for the department.

Conclusions

Based on the claimant’s representative’s assertion in the claim, and the documentation provided to the department by Hood River County, the claimant, Robert Benton, is an “owner” of the subject property as that term is defined by Section 11(A) of the Measure as of December 30, 1976; and that Charles King Benton is a “family” member as that term is defined by Section 11(A) of the Measure as of 1943.

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

The claim identifies all Commission administrative rules, ORS 92 and the exclusive farm use provisions of ORS 215 as laws that restrict the partition the 19.11-acre property into 20 to 40 parcels of various sizes for residential use.¹

The claim is based, generally, on Hood River County's current Exclusive Farm Use (EFU) Zone 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 3.² 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 215.263, 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 or the development of dwellings on such parcels.

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).

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 division of the claimants' property into parcels of less than two-acres in size. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses. Goal 14 became effective on January 25, 1975.

¹ The claimant's representative lists all of ORS 92 and all of OAR 660 as laws that restrict the use of the subject property, but does not establish how any of those laws restrict his client's use of the subject property. With the exception of those provisions of OAR 660, division 33 discussed in this report, on their face these laws do not restrict the use of the subject property in a manner that reduces the fair market value of the property for purposes of Measure 37. Absent an explanation by the claimant as to how any of these listed laws restrict the use of the subject property, they are not addressed further in this report.

² The claimant's property is "Agricultural Land" because it contains NRCS (Natural Resources Conservation Service) Class I-IV Soils.

The claimant's family acquired the subject property in 1943, before the adoption of the statewide planning goals or their implementing statutes and rules.

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 Robert Benton's family acquired ownership of the subject property in 1943, and do not allow the division of the property, thereby restricting the use of the property relative to the uses allowed when the property was acquired by the claimant's family in 1943. In 1943, the property was not subject to state land use regulations.

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 estimates \$2,740,680 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 into 20 to 40 parcels of various sizes for residential use. It states:

"In order to determine the amount of just compensation, due to Mr. Benton pursuant to Measure 37 Mr. Benton looked to the market value of land similar to that which he plans to develop. Mr. Benton claims that 80% of the 19.11 acres can be developed into approximately 2 residential lots per acre, and that a market exists to sell the lots with an average return of \$99,000/lot. Mr. Benton has calculated that 30 lots at \$99,000 on this land would be worth \$2,970,000. The difference between \$2,970,000 and \$229,320 is \$2,740,680. Of the \$2,740,680, \$1,370,340 involves tax lot 102 and \$1,370,340 involves tax lot 103 and is the amount of damage done to Mr. Benton by way of land use regulations."

No appraisal or other information to support this statement has been provided with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimant's family acquired the property in 1943. Thus, under Ballot Measure 37, the claimant, Robert Benton, 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 the property restrict division of the subject property for residential use. The claimant estimates the reduction in value due to the restrictions to be \$2,740,680.

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 1943, 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 Hood River County has implemented through its EFU zone. None of these laws appear to be exempt under Section 3(E) of Ballot 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 residential development and use of farm land apply to the claimant's use of the property, and for the most part these laws are not 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 he has provided to the department in his claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to his 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 claimant's ability to partition the 19.11-acre property into 20 to 40 parcels of various sizes for residential use. The claim asserts that the laws enforced by the Commission or department reduce the fair market value of the subject property by \$2,740,680. 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 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 Robert Benton, the current owner of the subject property, a use permitted at the time he acquired the property on December 30, 1976.

The claimant acquired the property on December 30, 1976, when it was zoned Agriculture, Single Family Dwelling (A-2). The A-2 zone allowed the creation of parcels with a minimum lot size of 7,500 square feet, if served by a public sewer, or to whatever level was allowed by the Hood River County Health Department to avoid water supply and sewage disposal problems. However, the County's A-2 zone that applied to the property at that time had not been acknowledged by the Commission under the standards for state approval of local comprehensive plans and land use regulations pursuant to ORS 197.250 and 197.251. The Commission reviewed the Hood River County Comprehensive Plan in 1980 and later acknowledged that the plan and land use regulations complied with the statewide goals on December 14, 1984 (Acknowledgment Order 84-ACK-388, dated January 11, 1985). Because the Commission had not acknowledged Hood River County's comprehensive plan and land use regulations when the claimant acquired the property on December 30, 1976, the Statewide Planning Goals applied directly to property on the date of acquisition.³

In 1976, the State standards for a land division involving property where the local zoning was not acknowledged were 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 (1975 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). In 1976, ORS 215.263 did not provide for the creation of a small parcel for a non-farm dwelling separate from the provisions just noted.⁴

Thus, the opportunity to divide the property when the claimant acquired it in 1976, was limited to land divisions done consistent with Goal 3, which required the resulting farm or non-farm parcels to be: (1) "appropriate for the continuation of the existing commercial agricultural enterprise in the area," and (2) shown to comply with the legislative intent set forth in ORS 215.243. (See endnote.)

³ Statewide Planning Goal 3 was applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of the County's Goal 3 program on July 30, 1984. (*Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977), *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978), *Jurgenson v. Union County*, 42 Or App 505 (1979), *Alexanderson v. Polk County*, 289 Or 427, *rev den* 290 Or 137 (1980) and *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985)). After the County's plan and land use regulations were acknowledged by Commission, the Statewide Planning Goals and implementing rules no longer directly applied to such local land use decisions (*Byrd v. Stringer*, 295 Or 311 (1983)). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same in substance, the applicable rules must be interpreted and applied by the county in making its decision. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

⁴ Compare ORS 2125.263 (1975 edition) with the current version of ORS 215.263.

As for dwellings allowed in an EFU zone, in 1976, ORS 215 required by Goal 3, allowed farm dwellings if determined to be “customarily provided in conjunction with farm use” under ORS 215.213(1)(e) (1975 edition). Before a farm dwelling could be established on Agricultural Land, the farm use to which the dwelling relates must “be existing.”⁵ Further, approval of a farm dwelling required that the dwelling be situated on a parcel wholly devoted to farm use and if on existing parcel, the dwelling had to be on a parcel “appropriate for the continuation of the existing commercial agricultural enterprise within the area under Goal 3. ORS 215.213(3) (1975 edition) authorized a non-farm dwelling only where the dwelling was compatible with farm uses, consistent with the intent of ORS 215.243, did not interfere seriously with accepted farming practices on adjacent lands, did not materially alter the stability of the land use pattern for the area, and was situated on land generally unsuitable for production of farm crops and livestock. ORS 215.213(3) (1975 edition).⁶

No information has been provided showing that the claimant’s request to divide the property into 20-to 40 parcels of various sizes for residential use for residential use complies with either of the applicable partition or dwelling standards under Goal 3, and ORS 215.213 (1975 edition) in effect at the time the claimant acquired the property in 1976. It is unlikely that the claimant’s desired level of development would have been allowed under the standards in effect in 1976. However, it is possible that some level of development would have been allowed at that time.

Conclusion

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

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Robert Benton’s division and development of the 19.11-acre property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), Goal 14 (Urbanization), ORS 215.263, 215.284, 215.780, and OAR 660, division 33 enacted after December 30, 1976. These land use regulations will not apply to Robert Benton’s use of his property only to the extent necessary to allow him a use permitted at the time he acquired the property on December 30, 1976. It is unlikely that the claimant’s desired level of development would have been allowed under standards in effect in 1976.
2. The action by the State of Oregon provides the state’s authorization to the claimant to use his property subject to the standards in effect on December 30, 1976. On that date, the property was subject to the applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), Goal 14 (Urbanization) and ORS 215 then in effect.

⁵ *Matteo v. Polk County*, 11 Or LUBA 259, 263 (1984), *affirmed without opinion*, 70 Or App 179 (1984) and *Newcomer v. Clackamas County*, 92 Or App 174, *modified* 94 Or App 33 (1988).

⁶ When determining whether land is “generally unsuitable for the production of farm crops and livestock” under ORS 215.213(3), the entire parcel or tract must be evaluated rather than a portion thereof. *Smith v. Clackamas County*, 313 Or 519 (1992).

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 him 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 28, 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.

ⁱ 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.”

On August 20, 1977, the Commission distributed a policy paper explaining the meaning of the Goal 3 minimum lot 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 5, specifically rules 15 and 20, 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).