

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

August 2, 2005

**STATE CLAIM NUMBER:** M119705

**NAME OF CLAIMANTS:** Terry Larson and Sherry Larson

**MAILING ADDRESS:** 650 Slagle Creek Road  
Grants Pass, Oregon 97527

**IDENTIFICATION OF PROPERTY:** Township 37S, Range 4W, Section 32  
Tax Lots 100, 1200 and 1300  
Jackson County

**DATE RECEIVED BY DAS:** February 10, 2005

**180-DAY DEADLINE:** August 9, 2005

**I. CLAIM**

Terry and Sherry Larson, the claimants, seek compensation in the amount of \$3,700,000 for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide three tax lots into parcels of 5 to 15-acres and to develop single-family residences on each resulting parcel. The parcels total approximately 182 acres, located in Jackson 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. The 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 the claimants to allow them to divide the subject property into 5 to 15-acre parcels for single-family residential development: applicable provisions of ORS 215, Statewide Planning Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands) and OAR 660, Divisions 6 and 33, to allow Terry and Sherry Larson a use of the properties permitted at the time they acquired them. These laws will not apply to the claimants' use of the property only to the extent necessary to allow the claimants to use Tax Lot 100 permitted when they acquired it on July 17, 1970; to use Tax Lot 1200 for a use permitted when they acquired it on

February 20, 1975; and to use Tax Lot 1300 for a use permitted when they acquired it on September 7, 1977. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On February 25, 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, there were eight written comments, evidence or information received in response to the 10-day notice.

Comments received that are specific to the criteria required under Measure 37 for the department's review of this claim are discussed in the appropriate section of this report. Some comments do 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. (See 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**

The claim was submitted to DAS on February 10, 2005 for processing under OAR 125, division 145. The claim identifies "Laws which were promoted by Senate Bill 100, Statewide Planning Goals 3 and 4, County wide zoning which took effect 9-1-73 and Jackson County Board Order 344-78." 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. Measure 37, Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

### **Findings of Fact**

The following table is compiled from information provided by the claimants and from the staff report from Jackson County:

Property Identification (Township, Range and Section)	Acreage	Ownership Data
T37S, R4W, S32, Tax Lot 100	161.6	Claimants acquired property through land sale contract, July 17, 1970. (See contract and fulfillment deed, dated September 17, 1977 in claims file)
T37S, R4W, S32, Tax Lot 1200	12.18	Claimants acquired property on February 20, 1975, from Eleanor Atkins, claimant Sherry Larson’s mother
T37S, R4W, S32, Tax Lot 1300	8.19	Claimants acquired property on September 7, 1977 from Eleanor Atkins, claimant Sherry Larson’s Mother

Several comments from nearby neighbors questioned the acquisition date of Tax Lot 100 and whether it was subject to statewide land use laws. A contact and fulfillment deed submitted with the claim substantiate that the claimants acquired an interest in the property on July 17, 1970.

Current ownership of these properties is reflected in the 2004 - 2005 Real Property Tax Statements for Jackson County, in the names of Terry Larson and Sherry Larson.

Eleanor Atkins acquired Tax Lots 1200 and 1300 on April 16, 1962. (See deed in claims file.)

## **Conclusions**

The claimants, Terry and Sherry Larson, are “owners” of the Tax Lots described above, as that term is defined by Section 11(C) of Ballot Measure 37. They have been owners of Tax Lot 100 since July 17, 1970; Tax Lot 1200 since February 20, 1975, and Tax Lot 1300 since September 7, 1977. Tax Lots 1200 and 1300 were acquired by Eleanor Atkins, a family member as that term is defined by section 11A of Measure 37, in 1962.

## **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 identifies “Laws which were promoted by Senate Bill 100, Statewide Planning Goals 3 and 4, Jackson County wide zoning which took effect 9-1-73 and County Board Order 344-78” as restricting the claimants’ ability to divide and develop their property. In a clarifying letter submitted with the claim and dated February 6, 2005, the Larsons state “Ideally, we would prefer a waiver so that we can continue with our original plans to subdivide. Lot sizes are difficult to determine at this early stage. However we would expect dimensions would require consideration of terrain, roadway, topography, septic, water, etc. We anticipate plots would vary from 5 to 15-acres.”

The claimants are unable to divide and develop subject parcels because they are subject to Statewide Goals 3 (Agricultural Lands), 4 (Forest Lands) and applicable provisions of ORS 215 and OAR 660, Divisions 6 and 33.

The table below summarizes the zoning for each of the three subject parcels, state laws cited in the following discussion correlate with local zoning as described.

Tax Lot	Zoning at time of family acquisition	Zoning at time of acquisition for current owners	Zoning Currently	Comment
100	No local zoning (1970)	No local zoning (1970)	Woodland Resource (effective November 10, 1982)	Mapped wildfire hazard, mapped floodplain
1200	No local zoning (1962)	Farm Residential (F-5) (1975)	Exclusive Farm Use (EFU)	Predominantly class IV soil types
1300	No local zoning (1962)	Farm Residential (F-5) (1977)	Exclusive Farm Use (EFU)	Predominantly class IV soil types

## **Current Laws that Apply**

**Tax Lots 1200 & 1300 --** The subject parcels are zoned Exclusive Farm Use (EFU) as required by Statewide Planning Goal 3 in accord with OAR 660, division 33, and OAR 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 subject properties to be divided into parcels less than 80-acres, or to have farm or non-farm dwellings on them.

Statewide Planning Goal 3, (Agricultural Lands) and the required provisions applicable to land zoned for EFU under ORS 215 and OAR 660, Division 33, including ORS 215.780, restrict the zoning, use and partition of the subject property. Goal 3 became effective on January 25, 1975 and requires agricultural land, as defined by the Goal, to be zoned EFU pursuant to ORS 215 (see citations to statutory and rule history under OAR 660-015-0000(3)). ORS 215.780 became effective on November 4, 1993 (Chapter 792, Or Laws 1993).

Together, pursuant to Statewide Planning Goal 3, ORS 215.283 and 215.780 and OAR 660-33-0130(4) and 660-033-0135 establish an 80-acre minimum lot size for the creation of a new parcel in an agricultural zone, and establish the standards for dwellings in agricultural zones under Statewide Planning Goal 3.

**Tax Lot 100 –** The subject parcel is zoned Woodland Resource, in accord with Statewide Planning Goal 4 (Forest Lands) (OAR 660-015-0000(4)), the provisions of OAR 660, division 6, and statutes applicable to land zoned for forest use under ORS 215, including ORS 215.705 to 215.755 and 215.780, that restrict the property's zoning, use and division. Goal 4 became effective on January 25, 1975, and required Forest Land as defined by the Goal to be zoned for forest use. (See citations to statutory and rule history under OAR 660-015-0000(4).) The Forest Land Administrative Rule, OAR 660, division 6, became effective September 1, 1982 and was substantially amended February 5, 1990, including amendments to OAR 660-06-026(4). ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (chapter 792, Or Laws 1993) and were implemented by OAR 660-006-0026 and 0027 on March 1, 1994, also including amendments to OAR 660-06-026(4). (See citations to rule history under OAR 660-015-0000(4).) ORS 215.730(1) (b) establishes approval standards for dwellings on lands zoned for forest use to protect the public health and safety with regard to fire safety, water supply and development on steep slopes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660-006-0026 and 0027 establish an 80-acre minimum lot size for the creation of a new parcel in a forest zone and also establish the standards for dwellings in forest zones.

## **Laws in Effect at Time of Acquisition**

The claimants' family first acquired Tax Lots 1200 and 1300 in 1962. The claimants acquired Tax Lot 100 in 1970. All three parcels were unzoned by the county on those dates.

Tax Lots 1200 and 1300 were zoned Farm Residential (F-5) when the claimants acquired them in 1975 and 1977. The text of the zone says that it was “not intended as a farm use zone under

ORS 215, application of this district shall not restrict in any manner the granting of tax deferment under the provisions of ORS 308.375.” The F-5 zone was a rural residential zone that nonetheless limited dwellings to those “customarily provided in conjunction with agriculture,” with a parcel size limited to five-acres. Furthermore, the predominant soil types are 164B which are type IV unirrigated, and type II irrigated.

### **Comments**

Several comments point out constraints to development of these properties based on slope, wildfire hazard, erosion and floodplain. These comments are addressed in Section 4 Exemptions.

### **Conclusions**

**Tax Lots 1200 and 1300** -- The minimum lot size and dwelling standards established by ORS 215.263, 215.284 and ORS 780, as applied by Goal 3 and OAR 660, division 33, were all adopted after the claimants’ family acquired Tax Lots 1200 and 1300 on April 16, 1962, and do not allow the approval of division of the parcel, with development of dwellings. No Jackson County zoning was in place in 1962 for the subject parcels. Land use laws enforced by the Commission or the department since 1962 restrict the use of these parcels relative to the uses allowed when Tax Lots 1200 and 1300 were acquired in 1962.

**Tax Lot 100** -- The current standards for land division and establishment of dwellings established by Statewide Goal 4 and OAR 660, division 6, were all adopted after the claimants acquired Tax Lot 100 in 1970, and do not allow the approval of division of Tax Lot 100 into 5 to 15-acre parcels with dwellings.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the use(s) 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 a claimant seeks a building permit 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 laws 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 states a fair market value reduction of \$3,700,000 for the properties. It is assumed that this figure is the total reduction in value for all three tax lots.

A letter filed with the claim, dated February 6, 2005, calculates the loss of fair market value for Tax Lot 100 only. The letter states that 5-acre lots are selling in the area of \$90,000 and \$150,000, depending on the amenities. The letter then takes an average amount of \$120,000 multiplied by 32 lots (based on an apparent estimate of 5-acre plots for the entire 182 acre property), to arrive at a figure of \$3,700,000. The letter also states the Jackson County estimate of real market value for Tax Lot 100 as \$140,000. The County Assessor's 2004 estimate of fair market value for all three Tax Lots is \$330,750 (land only). No appraisal or other documentation of the value of these parcels in a subdivided state is included in the claim. The Jackson County staff report and other information indicates that there are constraints on developing these parcels including steep slopes, mapped wildfire hazard areas and mapped floodplains.

### **Comments**

Commenters also stated that claimants had received approval for a major partition in 1982 for Tax Lot 100, thereby having already increased its fair market value. However the correct application of this criterion is fair market value today compared with fair market value at time of acquisition.

### **Conclusions**

As explained in section V. (1) of this report, the current owners of Tax Lots 100, 1200 and 1300 are Terry and Sherry Larson. The claimants' family acquired Tax Lots 1200 and 1300 in 1962, and the claimants acquired Tax Lot 100 in 1970. Under Ballot Measure 37, the Larsons are due compensation for land use laws that restrict the use of the subject properties in a manner that reduces their fair market value.

Without an appraisal or other documentation based on the value of the dwellings on the three lots, 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 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**

**Tax Lot 100** – The claim is based on Statewide Planning Goal 4, and applicable provisions of ORS 215 and OAR 660 Division 6. These specified laws were enacted after the claimants acquired the property and, as a result, are not exempt under subsection 3(E) of Measure 37. However, ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. These provisions include fire protection standards for dwellings and for surrounding Forest Lands. Section 3 (B) of Measure 37 specifically exempts regulations “restricting or

prohibiting activities for the protection of public health and safety, such as fire and building codes...” The siting standards for dwellings in forest zones in ORS 215.730 and in Goal 4 and its implementing rules (OAR 660, division 6) are exempt under subsection (3)(B) of Measure 37. To the extent that the claim identifies state laws that restrict the use of Tax Lot 100 in order to address flooding, wildfire, steep slopes, or erosion control, those laws also are exempt under subsections 3(A) to 3(C) of Measure 37.

**Tax Lots 1200 and 1300** – The claim is based on Statewide Planning Goal 3 and applicable provisions of ORS 215 and OAR Division 33. These specified laws were enacted after the claimants acquired the property and in general do not appear to be exempt under subsection 3(E) of Measure 37.

### **Conclusions**

**Tax Lot 100** – The general statutory, goal and rule restrictions on residential development and use of Forest Land apply to the claimants’ use of the property, and generally these laws do not appear to be exempt under section 3(E) of Measure 37. The siting requirements of ORS 215.730, Goal 4 and its implementing rules related to dwelling siting standards based on health and safety will also continue to apply, as will other laws related to public health and safety such as those relating to mapped floodplains, designated wildfire areas, steep slopes and erosion control.

**Tax Lots 1200 and 1300** – The law specified above that restrict the use of the claimants’ property were enacted after the claimants’ family acquired the property, and do not appear to be exempt under section 3(E) of the Measure.

Laws in effect when the claimants acquired the property are exempt under Section 3(E) of Measure 37, and will continue to apply to the claimants’ use of the property. There may be other laws that continue to apply to the claimants’ use of the property because they were not 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 an owner of property 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 use(s) 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. Claimants should be aware that the less information they have provided to the department in their claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their 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 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 to allow the present owner to carry out a use of the property allowed at the time the present owner acquired the property. The Commission, has by rule, 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 Terry and Sherry Larson from dividing and developing their parcels that are the subject of this claim. The laws enforced by the Commission or department reduce the fair market value of the three subject properties to some extent. The claim asserts this amount to be \$3,700,000. This amount is not substantiated by a professional appraisal or real estate analysis based on comparable properties in the area. Because the claim does not provide a specific explanation for how the specified restrictions reduce the fair market value of the property, a specific amount of compensation cannot be determined. Nevertheless, the department acknowledges that the laws on which the claim is based 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 the claimants to use the subject property for a use permitted at the time they acquired the property.

When the Larsons acquired Tax Lot 1200 on February 20, 1975, and Tax Lot 1300 on September 7, 1977, they were zoned F-5. Under this zone, there was a five-acre minimum parcel size for the creation of new lots or parcels. However the county's F-5 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 acknowledged that the Jackson County Comprehensive Plan and land use regulations complied with the Statewide Goals on April 22, 1983. Because the Commission had not acknowledged the plan and land use regulations, including the F-5 zone in effect when the properties was acquired by the Larsons on February 20, 1975 and September 7, 1977, Statewide Planning Goal 3 applied directly to the properties on the date of acquisition.<sup>1</sup>

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<sup>1</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 prior to the Commission's acknowledgment of the County's Goal 3 program in December 1984. (See *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. denied*, 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 the 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, the applicable statutes continue to apply, and insofar as the local implementing provisions are materially the same as the rules, the local provisions must be interpreted consistent

Until the County's land use regulations were acknowledged by the Commission, the use of the subject properties was subject to both the County's ordinances and the applicable Statewide Planning Goals, as well as applicable state statutes.

In 1975 and 1977, the state standards for a land division involving property where the local zoning were not acknowledged, in this case the F-5 zone, 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).<sup>2</sup> 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).<sup>4</sup> Thus, the opportunity to divide the properties when acquired by the claimants in 1975 and 1977, was limited to land divisions done consistent with Goal 3 that required the resulting parcels be either: (1) "appropriate for the continuation of the existing commercial agricultural enterprise in the area;" or (2) shown to comply with the legislative intent set forth in ORS 215.243.

As for dwellings allowed under EFU zoning as required by Goal 3 on the date of acquisition in 1975 and 1977, farm dwellings were allowed if determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 and 1975 editions) and non-farm dwellings were subject to ORS 215.213(3) (1973 and 1975 editions).<sup>3</sup>

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with the substance of the rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

<sup>2</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."

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*, 36 Or App 699 (1978); *Jurgenson v. Union County*, 42 Or App 505 (1979); *Alexanderson v. Polk County*, 289 Or 427, rev. denied, 290 Or 137 (1980); and *Thede v. Polk County*, 3 Or LUBA 336 (81). 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 015 and 020 effective July 21, 1982).

<sup>3</sup> Under the version of ORS 215.213 in effect when the claimants acquired the properties, a farm dwelling could be established on Agricultural Land only if the farm use to which the dwelling relates is existing, (*Matteo v. Polk County*, 11 Or LUBA 259, 263 (1984) affirmed without opinion, 70 Or App 179 (September 14, 1984) and *Newcomer v. Clackamas County*, 92 Or App 174, modified 94 Or App 33, November 23, 1988)

## Conclusion

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to the Larsons' use of the properties to allow them to divide the subject properties into 5 to 15-acre parcels for single-family residential development:<sup>4</sup>

**Tax Lot 100** – The provisions of Statewide Planning Goal 4, ORS 215.705, 215.755 and 215.780 and applicable provisions of OAR 660, division 6, that relate to land divisions and establishment of dwellings. These laws will not apply to the claimants' use of the property only to the extent necessary to allow the claimants to use the property for a use permitted when they acquired it on July 17, 1970. The siting standards for dwelling under ORS 215.730, Goal 4 and OAR 660, division 6, relating to fire protection, will continue to apply to the property.

**Tax Lot 1200** -- The provisions of Statewide Planning Goal 3, ORS 215.263, ORS 215.780, ORS 215.284 and applicable provisions of OAR 660, Division 033, that relate to land divisions and the establishment of dwellings enacted after February 20, 1975. These laws will not apply to the claimants' use of the property only to the extent necessary to allow the claimants to use the property for a use permitted when they acquired it on February 20, 1975.

**Tax Lot 1300** -- The provisions of Statewide Goal 3, ORS 215.263, ORS 215.780, ORS 215.284 and OAR 660-033-100 that relate to land divisions and the establishment of dwellings, enacted after September 7, 1977. These laws will not apply to the claimants' use of the property only to the extent necessary to allow the claimants to use the property for a use permitted when they acquired it on September 7, 1977.

2. The action by the State of Oregon provides the state's authorization to the claimants to divide and develop their property, subject to those standards in effect on the dates the claimants acquired each parcel:

**Tax Lot 100** -- State laws in effect on July 15, 1970, including any applicable provisions of ORS 215 in effect on that date. The siting requirements of ORS 215.730, Goal 4 and its implementing rules related to dwelling siting standards based on health and safety, which are exempt under Ballot Measure 37, Section 3(B), will also continue to apply, as well as other laws related to public health and safety such as those relating to floodplains, wildfire, steep slopes and erosion control.

**Tax Lot 1200 and Tax Lot 1300** – State laws in effect on February 20, 1975 (for Tax Lot 1200) and September 7, 1977 (for Tax Lot 1300). As explained above, on those dates, the division and development of the property was subject to the provisions of Goal 3 and ORS 215 (1973 edition for Tax Lot 1200, and 1975 edition for Tax Lot 1300). These provisions require that the resulting parcels or lots be: (1) "appropriate for the continuation of the existing commercial agricultural enterprise in the area; and (2) shown to comply with the standards for the creation of farm parcels under ORS 215.213 (1973 Edition). Similarly, the standards for residential dwellings in effect in 1975 and 1977 generally require that any farm dwelling be customarily provided in

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<sup>4</sup> The non-application or waiver of state laws cited in this report should not be interpreted to affect private lease agreements.

conjunction with farm use, or meet the requirements for non-farm dwellings under Goal 3 and ORS 215.213(3).

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 any of the properties until the claimants first obtains that permit, license, or other form of authorization nor consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.412 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the properties imposed by private parties.

4. Any use of any of the properties 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 DLCD; and (c) those laws not subject to Measure 37, including, without limitation, those laws exempted under section (3) of Measure 37.

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use any of the properties, 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 properties. Nothing in this order relieves the claimants 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 any of the properties by the claimants.

Any use of the properties by the claimants remain subject to the following laws: (a) those laws not specified in his claim to the State of Oregon or identified in this report, (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 excepted under section (3) of the measure.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on July 13, 2005. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.