

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 118720
BALLOT MEASURE 37 (CHAPTER 1,)
OREGON LAWS 2005) OF)
William J. Wright, CLAIMANT)
Doreen Mary Wright, CLAIMANT)

Claimant: William J. Wright and Doreen Mary Wright (the Claimants)

Property: Tax Lot 100, T.26S, R.12W, Section 18A, W.M., Coos 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 William J. Wright's and Doreen Mary Wright's subdivision of the property into 15 parcels for residential development: those provisions of Statewide Planning Goal 3, OAR 660, division 33, and ORS 215 enacted after the claimants acquired their interest in the property. These laws will not apply to Mr. Wright only to the extent necessary to allow him a use of the property permitted at the time he acquired it on August 6, 1980. These laws will not apply to Ms. Wright's use of the property only to the extent necessary to allow her a use permitted at the time she acquired the property on June 22, 1995.
2. The action by the State of Oregon provides the state's authorization to William J. Wright to use his property subject to the standards in effect on August 6, 1980, including applicable provisions of Goal 3 and ORS 215 then in effect. The action by the State of Oregon provides the state's authorization to Doreen Mary Wright to use her property subject to the standards in effect on June 22, 1995, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33.

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 Deputy 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 ____ day of _____, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:

Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this ____ day of _____, 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**

September 28, 2005

STATE CLAIM NUMBER: M118720

NAMES OF CLAIMANTS: William J. Wright and
Doreen Mary Wright

MAILING ADDRESS: PO Box 1442
Coos Bay, OR 97420

IDENTIFICATION OF PROPERTY: Township 26S, Range 12W,
Section 18A, Tax lot 100
Coos County

OTHER INTEREST IN PROPERTY: Wright Loving Trust

DATE RECEIVED BY DAS: April 8, 2005

180-DAY DEADLINE: October 5, 2005

I. CLAIM

The claimants, William J. Wright and Doreen Mary Wright, seek compensation in the amount of \$1,350,000, 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 the 77.24-acre property into 15 parcels of approximately equal size and to develop a residential dwelling on each parcel. The subject property is located in Coos 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 claimants' division of the property into 15 parcels and development of the property for residential uses: Statewide Planning Goal 3 and applicable provisions of ORS 215 and OAR 660, division 33, enacted after they acquired their interest in the property. These laws will not apply to Mr. Wright only to

the extent necessary to allow him a use of the property permitted at the time he acquired it on August 6, 1980; and will not apply to Ms. Wright only to the extent necessary to allow her a use of the property permitted at the time she acquired it on June 22, 1995. The department acknowledges that the relief to which Ms. Wright is entitled under Measure 37 will not allow her to use the property in a manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On April 27, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services provided notice to owners of surrounding properties. According to DAS, two written comments were received in response to the 10-day notice.

The 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 claim to pay compensation for instead of waiving a state law. (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 8, 2005, for processing under OAR 125, division 145. 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 was 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 to “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

William J. Wright acquired the subject property on August 6, 1980, as reflected by a copy of Warranty Deed included with the claim. The property was placed in the Wright Loving Trust, a revocable living trust established by Mr. Wright, with William J. Wright and Doreen Mary Wright as trustees, on June 22, 1995. The transfer of the property to a revocable living trust does not constitute a change of William Wright’s ownership for the purpose of this Measure 37 claim.

Conclusions

Claimant William Wright is an “owner” of the subject property, as defined by Section 11(C) of Ballot Measure 37, as of August 6, 1980. Claimant Doreen Wright is an “owner” of the subject property, as defined by Section 11(C) of Ballot Measure 37, as of June 22, 1995. Mr. Wright is a “family member” of Ms. Wright under Section 11(A) of Ballot Measure 37.

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 the 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 subject property is zoned Exclusive Farm Use (EFU), by the Coos County Zoning and Land Development Ordinance, which precludes the claimants from dividing and developing their approximately 77-acre property.¹ This zoning is required by Goal 3 in

¹ The applicable county zoning ordinance for the division of the property is Section 4.9.900 Land Divisions. Other parts of the Exclusive Farm Use (EFU) Zoning that would apply to the development of

accord with OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3. Goal 3 became effective on January 25, 1975, and required that agricultural lands, as defined by the Goal, be zoned EFU. Land that is zoned EFU also is subject to restrictions based on certain provisions of ORS 215. Current land use regulations, particularly ORS 215.263, 215.284, 215.780, along with Goal 3 and OAR 660, division 33, do not allow the subject property to be divided into parcels of less than 80 acres and establish standards for farm and non-farm dwellings.

ORS 215.780 contains 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 (1993 HB 3661)). ORS 215.263 contains standards for the creation of new parcels for farm uses, non-farm uses and dwellings allowed in an EFU zone and became effective on October 5, 1973. ORS 215.263 was amended in 2001 by HB 3326 to provide new standards for the creation of new parcels for non-farm dwellings and the creation of new non-farm dwellings.

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 administrative rule history for OAR 660-033-0100, 660-033-0130, and 660-033-0135.)

The subject property was zoned IRR-5 when Mr. Wright acquired it in 1980, and qualified as agricultural land under ORS 215. Under the IRR-5 zone, there was a 5-acre minimum parcel size for the creation of new lots or parcels. However, the County's IRR-5 zone that applied to the property in 1980 was not 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 the Coos County Zoning and Land Development Ordinance as complying with the Statewide Planning Goals on October 8, 1985.² Since the Commission had not acknowledged Coos County's comprehensive plan and land use regulations, including the IRR-5 zone, when Mr. Wright acquired the property on August 6, 1980, Statewide Planning Goal 3 applied directly to property on that date.³

the property are Sections 4.8.525 (Forest Dwellings), 4.9.600 (Siting Standards for Dwellings and Structures in an EFU Zone), and 4.8.700 (Development Standards).

² The Commission's Acknowledgement Order in 1985, did not address some exception areas that were appealed, and was followed by a final Acknowledgement Order on January 31, 1990. The areas in dispute were not relevant to the zoning ordinances applicable to this claim.

³ 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 County's Goal 3 program on October 8, 1985 (*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*

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 is “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). Thus, when Mr. Wright acquired the property in 1980, it could be divided if the resulting parcels were: (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 endnote¹.)

Under those applicable standards, farm dwellings were allowed under EFU zoning 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 related must have “be[en] existing.”⁴ Further, approval of a farm dwelling required that the dwelling be situated on a parcel wholly devoted to farm use. 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.))

Conclusions

Current land use regulations, particularly lot size and dwelling standards established by amendments to Statewide Planning Goal 3, amendments to ORS 215, and OAR 660, division 33, enacted after claimant William J. Wright acquired the property in 1980, do not allow the division of the property into parcels less than 80 acres in size or allow the approval of dwellings as may have been possible in 1980. However, while land use laws adopted since Mr. Wright acquired the property in 1980, restrict the claimants from dividing or developing the property relative to the uses allowed when Mr. Wright acquired the property, it is unclear whether the claimants’ requested level of development complies with the standards in effect when Mr. Wright acquired the property on August 6, 1980.

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 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 *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).

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. It will not be possible to know what laws apply to a use of a property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

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

According to the claimants, the value of the subject property has been reduced \$1,350,000, as a result of the current regulations. The claimants included copies of real estate sales information for comparable properties to substantiate the base value for the proposed parcels.

Conclusions

As explained in Section V.(1) of this report, the current owners of the subject property are William J. Wright and Doreen Mary Wright. William J. Wright acquired the property in 1980. Thus, under Ballot Measure 37, Mr. and Ms. Wright are due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws adopted since Mr. Wright acquired the property in 1980, restrict the claimants ability to divide and develop the subject property. The claimants estimate the reduction in value due to the restrictions to be \$1,350,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that 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 Coos County's EFU zone and the related provisions of state law that have restricted use of the property and reduced its fair market value, including Statewide Planning Goal 3 (Agricultural Lands) and applicable provisions of ORS 215 and OAR 660, division 33. With the exception of provisions of Goal 3 and ORS 215 in effect when Mr. Wright acquired the property in 1980, these laws are not exempt, under Section 3(E) of Ballot Measure 37, which exempts laws in effect when the claimant or claimants' 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 claimants' use of the property, and these laws are not exempt under Section 3(E) of Measure 37 to the extent they were enacted after Mr. Wright acquired the property. Provisions of Goal 3 and ORS 215 in effect when Mr. Wright acquired the property in 1980 are exempt under Section 3 (E) of the measure and will continue to apply to the property.

Other laws in effect when Mr. Wright acquired the property are also 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 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 claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. 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 claimants have 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 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 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 owner to carry out a use of the

property permitted at the time the 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 conclusion set forth in this report, laws enforced by the Commission or the department, restricts the division of the subject property for residential development. The claim asserts that laws enforced by the Commission or department reduce the fair market value of the subject property by \$1,350,000. Because the claim does not provide an appraisal or other documentation to establish 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 may 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 one or more land use regulations to the extent necessary to allow William J. Wright to use the subject property for a use permitted at the time he acquired it on August 6, 1980, and to allow Doreen Mary Wright to use the subject property for a use permitted at the time she acquired her interest in it on June 22, 1995. When Ms. Wright acquired the property, the laws that currently apply to the subject property were in effect. (See Section V.(2) of this report for a description of the laws that apply.)

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 the claimants' division and development of the subject property: those provisions of Statewide Planning Goal 3, OAR 660, division 33, and ORS 215 enacted after the claimants acquired their interest in the property. These laws will not apply to Mr. Wright only to the extent necessary to allow him a use of the property permitted at the time he acquired it on August 6, 1980. These laws will not apply to Ms. Wright's use of the property only to the extent necessary to allow her a use permitted at the time she acquired the property on June 22, 1995. The department acknowledges that the relief to which Ms. Wright is entitled under Measure 37 will not allow her to use the property in a manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to William J. Wright to use his property subject to the standards in effect on August 6, 1980, including applicable provisions of Goal 3 and ORS 215 then in effect. The action by the State of Oregon provides the state's authorization to Doreen Mary Wright to use her property

subject to the standards in effect on June 22, 1995, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33.

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 claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or 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 claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to 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 claimants to use the property, it may be necessary for them 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 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 the property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on September 14, 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 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, *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 (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 (7/16/82); *Goracke v. Benton County*, 8 Or LUBA 128 (6/8/83); 68 Or App 83 (5/9/84); 12 Or LUBA 128 (9/26/84); 13 Or LUBA 146 (4/4/85); 74 Or App 453 (7/1785), *rev. denied* 300 Or 322 (11/26/85); 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).