

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)	FINAL ORDER
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M118476
(BALLOT MEASURE 37) OF)	
Donald R. Leffler and Richard D. Leffler,)	
CLAIMANTS)	

Claimants: Donald R. Leffler and Richard D. Leffler (the Claimants)

Property: Township 3S, Range 3W, Section 5, Tax lot 3305, Yamhill County (the Property)

Claim: The demand for compensation and any supporting information received from the Claimants by the State of Oregon (the Claim).

Claimants submitted the Claim to the State of Oregon under ORS 197.352. 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 ORS 197.352, the State of Oregon will not apply the following laws to Donald R. Leffler and Richard D. Leffler's division of the 98.2-acre parcel into one 20-acre parcel and one 78.2-acre parcel and to their development of a dwelling on the 20-acre parcel: applicable provisions of Statewide Planning Goal 3, ORS 215 and OAR 660, division 33 enacted after the claimants acquired their respective interests in the property. These laws will not apply to Richard Leffler's use of his property only to the extent necessary to allow him to use the property for the use described in this report, and only to the extent that use was permitted at the time he acquired the property on December 3, 1976. These laws will not apply to Donald Leffler's use of his property only to the extent necessary to allow him to use the property for the use described in this report, and only to the extent that use was permitted at the time he acquired the property on November 22, 1999. The department acknowledges that the relief to which Donald R. Leffler is entitled under ORS 197.352 will not allow him to use the property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to Richard Leffler to use the property for the use described in this report subject to the standards in effect on December 3, 1976. On that date, the property was subject to the applicable provisions of Statewide Goal 3 (Agricultural Lands) and ORS 215 then in effect; and provides the state's authorization to Donald Leffler to use the property for the use described in this report, subject to the standards in effect on November 22, 1999. On that date, the property was subject to the applicable provisions of Statewide Goal 3 (Agricultural Lands), ORS 215 and OAR 660, division 33 currently in effect.

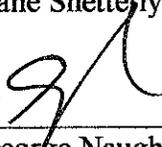
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first 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 ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

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 ORS 197.352, 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 ORS 197.352, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimants.

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 ORS 197.352, 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 ORS 197.352, OAR 125, division 145, and ORS 293.

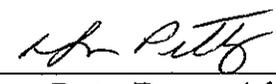
FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:
Lane Shetterly, Director



George Naughton, Deputy Director
DLCD

Dated this 29th day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 29th day of March, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. 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 or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352¹, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(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)

¹ By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

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 (ORS 197.352)
CLAIM FOR COMPENSATION**

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

March 29, 2006

STATE CLAIM NUMBER: M118476

NAMES OF CLAIMANTS: Donald R. Leffler and Richard D. Leffler

MAILING ADDRESS: 15555 Northeast North Valley Road
Newberg, Oregon 97132

PROPERTY IDENTIFICATION: Township 3S, Range 3W, Section 5
Tax lot 3305
Yamhill County

DATE RECEIVED BY DAS: May 20, 2005

180-DAY DEADLINE: April 4, 2006¹

I. SUMMARY OF CLAIM

The claimants, Donald R. Leffler and Richard D. Leffler, seek compensation in the amount of \$94,833 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 partition the 98.2-acre property into one 20-acre parcel and one 78.2-acre parcel and to develop a residential dwelling on the 20-acre parcel. The property is located at 15481 North Valley Road, near Newberg, in Yamhill 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 Donald and Richard Leffler's division of the property into one 20-acre parcel and one 78.2-acre parcel and to development a dwelling on the resulting 20-acre parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215, and OAR 660, division 33, in effect after the claimants acquired their respective interest in the property.. These laws will not apply to Richard Leffler's use of the property only to the extent

¹ This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Ballot Measure 37 was suspended during the pendency of the appeal of *MacPherson v. Dep't of Admin. Servs.*, 340 Or ___, 2006 Ore. LEXIS 104 (February 21, 2006).

necessary to allow him to use the property for the use described in this report, to the extent that use was permitted at the time he acquired the property on December 3, 1976; and will not apply to Donald Leffler's use of the property only to the extent necessary to allow him to use the property for the use described in this report, to the extent that use was permitted at the time he acquired the property on November 22, 1999. The department acknowledges that the relief to which Donald Leffler is entitled under ORS 197.352 (Ballot Measure 37) will not allow him to use the property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 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, evidence or information was received in response to the 10-day notice.

The comment is relevant to whether the restriction of the claimants' 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

ORS 197.352(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 Ballot Measure 37 (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 Ballot Measure 37 (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 identifies Yamhill County's Exclusive Farm Use (EFU) zone as the law that restricts the use of the property as the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of Ballot 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 Ballot Measure 37, based on land use regulations adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in ORS 197.352. ORS 197.352 (11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

Richard D. Leffler acquired the property on December 3, 1976, by Bargain and Sale Deed. Donald R. Leffler, Richard’s brother, acquired an interest in the property on November 22, 1999, by Bargain and Sale Deed. A title report dated January 2004, confirms Richard and Donald Leffler’s current ownership of the subject property.

Conclusions

Richard D. Leffler is an “owner” of the subject property as the term is defined by ORS 197.352 (11)(C), as of December 3, 1976. Donald R. Leffler is an “owner” of the property as of November 22, 1999. Richard Leffler is a “family member” of Donald Leffler as that term is defined by ORS 197.352(11)(A).

2. The Laws that are the Basis for this Claim

In order to establish a valid claim, ORS 197.352(1) 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 states: “At the time of purchase in 1976, the property was zoned AF-20 which allowed one home per twenty acres. The zoning has been changed by the county not at the request of the owner of the property to EF-80. Listed in Section 402 of the Yamhill County Ordinance, it states that the minimum size for a parcel is eighty acres. It also states in Section 402.03(A) that at least \$80,000 in gross annual income from the sale of farm product in each of the last two years or three of the last five years.”

The claim is based, generally, on Yamhill County’s current Exclusive Farm Use (EFU) zone and the applicable provisions of state law that require such zoning. The claimants’ property is zoned

EFU as required by Goal 3, in accord with OAR 660, division 33 and ORS 215 because the claimants' 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 of less than 80 acres and establish standards for allowing the existing or any proposed parcels to have farm or non-farm dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 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.)

When Richard Leffler acquired the property on December 3, 1976, it was zoned AF-20 by Yamhill County. However, the County's AF-20 zone that applied to the property at that time 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. Since the Commission had not acknowledged Yamhill County's comprehensive plan and land use regulations, including the A-2 zone, when Richard Leffler acquired the property on December 3, 1976, statewide planning goals, including in particular, Goal 3, applied directly to property on the date of Richard Leffler's acquisition.³

² The claimants' property is "agricultural land" because it contains NRCS (Natural Resources Conservation Service) Class I-IV Soils.

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).

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).

Thus, the opportunity to divide the property when Mr. Leffler 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 endnote¹.)

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.”⁴ 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).⁵

No information has been provided showing that the claimants’ requested 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 Richard Leffler acquired the property in 1976.

Conclusions

The zoning requirements, minimum lot size and dwelling standards established by ORS 215 and OAR 660, division 33 were enacted after Richard Leffler acquired the property in 1976, and do not allow the division and development of the property as may have been possible in 1976. When Richard Leffler acquired the property in 1976, the standards established by Statewide Planning Goal 3 (Agricultural Lands) applied directly to the property.

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. There may

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).

⁵ 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).

be other laws that currently apply to the claimants' use of the property, and that may 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.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) 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 \$94,833 as the reduction in the property's fair market value due to current regulations. This amount is based on the claimants' assessment of four nearby 80- and 88-acre parcels and five nearby 20- to 30-acre parcels that sold in the past year. According to the claim, the average price per acre of the 80- and 88-acre parcels was \$6,355.75 and the average price of the 20- to 30-acre parcels was \$11,097.40. The claim did not include an appraisal or other documentation to support the estimate.

Conclusions

As explained in Section V.(1) of this report, the claimants are Richard and Donald Leffler. Richard Leffler acquired the property in 1976. Thus, under ORS 197.352, the claimants 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 the claimants acquired the property restrict division of the subject property for residential use. The claimants estimate the reduction in value due to restrictions to their property since December 3, 1976, is \$94,833.

Without an appraisal or other documentation, and without verification that the requested use would have been permitted when Richard Leffler acquired the property, 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 ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on land use regulations that restrict the use of the claimants' property relative to uses that may have been allowed when Richard Leffler acquired the property in 1976. These include Statewide Planning Goal 3 (Agricultural Lands) and applicable provisions of ORS 215 and OAR 660, division 33, which Yamhill County has implemented through its EFU zone. These laws are not exempt under ORS 197.352(3)(E) to the extent they were enacted or adopted after Richard Leffler acquired the subject property. Provisions of ORS 215 and Goal 3 in effect in December 1976, are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant or 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 ORS 197.352. 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 ORS 197.352(3)(E), to the extent they were enacted or adopted after Richard Leffler acquired the property. Provisions of ORS 215 and Goal 3 enacted or adopted before December 1976, are exempt under ORS 197.352(3)(E) and will continue to apply to the subject property.

Other laws in effect when Richard Leffler acquired the property in 1976, are also exempt under ORS 197.352(3)(E), 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 ORS 197.352(3)(A) to (D).

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 ORS 197.352(3), that are clearly applicable given the information provided to the department in the claim. The claimants should be aware that the less information they provided to the department in the 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

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced a law that restricts the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the current owner acquired the property. The Commission, by rule, has

directed that if the department determines a claim is valid, the Director must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimant's ability to divide the subject property into one 20-acre parcel and one 78.2-acre parcel, and to develop a dwelling on the resulting 20-acre parcel. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$94,833. 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, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Richard Leffler, a use permitted at the time he acquired the property on December 3, 1976, and to allow Donald Leffler a use permitted at the time he acquired the property on November 22, 1999. The provisions of the law in effect in 1976, that apply to Richard's Leffler's use of the property are described in Section V.(2) of this report. Donald Leffler's use of the property is subject to the laws in effect in 1976, including current laws that apply to the subject property, as also described in Section V.(2) of this report.

Conclusion

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Donald R. Leffler and Richard D. Leffler's division of the 98.2-acre parcel into one 20-acre parcel and one 78.2-acre parcel and to their development of a dwelling on the 20-acre parcel: applicable provisions of Statewide Planning Goal 3, ORS 215 and OAR 660, division 33 enacted after the claimants acquired their respective interests in the property. These laws will not apply to Richard Leffler's use of his property only to the extent necessary to allow him to use the property for the use described in this report, and only to the extent that use was permitted at the time he acquired the property on December 3, 1976. These laws will not apply to Donald Leffler's use of his property only to the extent necessary to allow him to use the property for the use described in this report, and only to the extent that use was permitted at the time he acquired the property on November 22, 1999. The department acknowledges that the relief to which Donald R. Leffler is entitled under ORS 197.352 will not allow him to use the property in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to Richard Leffler to use the property for the use described in this report subject to the standards in effect on December 3, 1976. On that date, the property was subject to the applicable provisions of

Statewide Goal 3 (Agricultural Lands) and ORS 215 then in effect; and provides the state's authorization to Donald Leffler to use the property for the use described in this report, subject to the standards in effect on November 22, 1999. On that date, the property was subject to the applicable provisions of Statewide Goal 3 (Agricultural Lands), ORS 215 and OAR 660, division 33 currently 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 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 ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

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 ORS 197.352, 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 ORS 197.352, 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 March 13, 2006. 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.

¹ 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*, *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).