

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 118345  
BALLOT MEASURE 37 (CHAPTER 1, )  
OREGON LAWS 2005) OF )  
Jacque Parsons, CLAIMANT )

Claimant: Jacque Parsons (the Claimant)

Property: Tax Lots 1000 and 1203, T.3S, R.1W, Section 4, W.M., Clackamas County

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

Claimant submitted the Claim to the State of Oregon under Ballot Measure 37 (2004) (Oregon Laws 2005, Chapter 1) (hereafter, Measure 37). Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Jacque Parsons' division and development of the subject property: applicable provisions of Statewide Planning Goal 3, ORS 215 and OAR 660, division 33, enacted after the claimant acquired the property. These land use regulations will not apply to Jacque Parsons' use of tax lot 1000 only to the extent necessary to allow the claimant a use permitted at the time he acquired that tax lot on February 28, 1975, and will not apply to Jacque Parson's use of tax lot 1203 only to the extent necessary to allow the claimant a use permitted at the time he acquired that tax lot on May 25, 1980.
2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lot 1000 subject to the standards in effect on February 28, 1975, and to use tax lot 1203 subject to the standards in effect on May 25, 1980. On those dates, the subject tax lots were subject to applicable provisions of Goal 3, Goal 14 and ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

4. Any use of the property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to Measure 37 including, without limitation, those laws exempted under Section (3) of the Measure.

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for her to obtain a decision under Measure 37, from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under Measure 37, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under Measure 37, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under Measure 37, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION  
AND DEVELOPMENT COMMISSION:

Lane Shetterly, Director



George Naughton, Deputy Director  
DLCD

Dated this 12<sup>th</sup> day of October, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:



David Hartwig, Administrator  
DAS, State Services Division

Dated this 22<sup>nd</sup> day of October, 2005.

## **NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF**

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

1. Judicial review under ORS 293.316: Judicial review under ORS 293.316 may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review under ORS 293.316 is pursuant to the provisions of ORS 183.482 to the Court of Appeals.
2. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County and the Circuit Court in the county in which you reside.
3. A cause of action under Oregon Laws 2005, chapter 1 (Measure 37 (2004)): A present owner of the property, or any interest therein, may file a cause of action in the Circuit Court for the county where the property is located, if a land use regulation continues to apply to the subject property more than 180 days after the present owner made a written demand for compensation.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

### **FOR INFORMATION ONLY**

The Oregon Department of Justice has advised the Department of Land Conservation and Development that “[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost.”

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

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

October 12, 2005

**STATE CLAIM NUMBER:** M118345

**NAMES OF CLAIMANTS:** Jacque Parsons

**MAILING ADDRESS:** 25460 SW Baker Road  
Sherwood, Oregon 97140

**PROPERTY IDENTIFICATION:** Township 3S, Range 1W, Section 4  
Tax Lots 1000 and 1203  
Clackamas County

**DATE RECEIVED BY DAS:** April 22, 2005

**180-DAY DEADLINE:** October 18, 2005

**I. SUMMARY OF CLAIM**

The claimant, Mr. Jacque Parsons, seeks compensation in the amount of \$20,100,000 for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the 58.39-acre property into approximately one-acre parcels and to develop a dwelling on each parcel.<sup>1</sup> The property is located at 25460 SW Baker Road, south of the City of Sherwood, in Clackamas County. (See claim.)

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Jacque Parsons' division of the subject property for residential development: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and OAR 660, division 33, enacted after he acquired the property. These land use regulations will not apply to Jacque Parsons' use of tax lot 1000 only to the extent necessary to allow the claimant a use permitted at the time he acquired that tax lot on February 28, 1975, and will not apply to Jacque Parson's use of tax lot 1203 only to the extent necessary to allow the claimant a

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<sup>1</sup> Tax lot 1000 is 57.72-acres in size. Tax lot 1203 is 0.67-acres in size and used as a road access to tax lot 1000.

use permitted at the time he acquired that tax lot on May 25, 1980. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On May 6, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, one written comment was received in response to the 10-day notice.

The comment does not address whether the claim meets the criteria for relief (compensation or waiver) under Measure 37. Comments concerning the effects a use of the property may have on surrounding areas generally are not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waiving a state law. (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**

This claim was submitted to DAS on April 22, 2005, for processing under OAR 125, division 145. The claim identifies specific state statutes and administrative rules related to Statewide Planning Goal 3 as laws that restricts the use of the property and are the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37, are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

#### **Conclusions**

The claim has been submitted within two years of December 2, 2004; the effective date of Measure 37, based on land use regulations adopted prior to December 2, 2004, and is therefore timely filed.

## V. ANALYSIS OF CLAIM

### 1. Ownership

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

### Findings of Fact

The claimant, Jacque Parsons, acquired tax lot 1000 on February 28, 1975, by a Land Sale Contract (Clackamas County Deed Records 75 5375)<sup>2</sup>. On April 12, 1996, the claimant deeded tax lot 1000 to himself as Trustee of the Parsons Family Trust.

The claimant acquired tax lot 1203 on May 25, 1980, by a Warranty Deed. On April 12, 1996, the claimant deeded this tax lot to himself as Trustee of the Parsons Family Trust. Tax lot 1203 is currently being used as a road access from Morgan Road to tax lot 1000.

The trust document provided by the claimant certifies that the Parsons Family Trust is a revocable trust. The transfers of the property into a revocable trust do not constitute a change in ownership for purposes of Measure 37.

A copy of a preliminary title report, dated April 14, 2005, indicates that as of April 1, 2005, Jacque Parsons, Trustee for the Parsons Family Trust, is the current owner of tax lots 1000 and 1203.

### Conclusions

The claimant, Jacque Parsons, is an “owner” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37. The claimant acquired tax lot 1000 on February 28, 1975, and tax lot 1203 on May 25, 1980.

### 2. The Laws that are the Basis for this Claim

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires, in part, that a law must restrict the claimant’s use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

### Findings of Fact

For each regulation cited, the claim provides the following statement as to how they restrict the use of the subject property:

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<sup>2</sup> On December 31, 1986, tax lot 1000 was deeded to the claimant and Judy Parsons. On that date, Judy Parsons deeded her interest in this tax lot to the claimant.

OAR 660-033-0100(1): “At the time owner acquired the property the minimum lot size was one acre. The rule increased the minimum lot size to 80 acres.”

ORS 215.780(1)(a): “At the time owner acquired property it was zoned RA-1 which allowed one-acre home sites. Zoning was changed to exclusive farm use on June 18, 1979. This law changed the minimum lot size of land zoned for exclusive farm use to 20 acres and then ultimately 80 acres in November 1993.”

OAR 660-033-0130(3)(a): “At the time owner acquired property owner could have partitioned the property into one acre parcels and would have been allowed to site a dwelling on each one acre parcel. This rule restricts the owner to one dwelling on the entire subject property.”

ORS 215.283(1)(f): “At the time owner acquired property any dwelling could be built. This law restricts construction of a dwelling to one that will be used in conjunction with farm use.”

ORS 215.263(1): “At the time owner acquired property it could be divided into one acre parcels. This law requires review and approval by the governing body of Clackamas County of proposed land divisions in EFU zones. Said governing body would disapprove based on 80 acre minimum lot size requirement.”

The claim is based generally on Clackamas County’s current Exclusive Farm Use (EFU) Zone and the applicable provisions of state law that require such zoning. The claimant’s property is zoned EFU as required by Statewide Planning Goal 3 in accord with OAR 660, division 33 and ORS 215 because the claimant’s property is “Agricultural Land” as defined by Goal 3. Goal 3 became effective on January 25, 1975, and required that Agricultural Lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284, 215.780 and OAR 660, division 33 as applied by Goal 3, do not allow the subject property to be divided into parcels less than 80 acres 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 (2003 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f).

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

When the claimant acquired tax lot 1000 in 1975 it was zoned by Clackamas County as Rural Agricultural - Single Family Residential (RA-1), which had an one-acre minimum parcel size requirement for the creation of new lots or parcels. When the claimant acquired tax lot 1203 in 1980, it was zoned by Clackamas County as Exclusive Farm Use (EFU-20) which had a 20-acre minimum lot size for the creation of new lots or parcels. The claimant acquired tax lots 1000 and 1203 after the enactment of the Statewide Planning Goals, but before Clackamas County's land use regulations were 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. Because the County land use regulations were not acknowledged by the Commission when the claimant acquired tax lots 1000 on February 28, 1975, and tax lot 1203 on May 25, 1980, Statewide Planning Goal 3 would have applied directly the any development application for those properties.<sup>3</sup>

As adopted on January 25, 1975, Statewide Goal 3 (Agricultural Lands) required that agricultural land "be preserved and zoned for Exclusive Farm Use (EFU) pursuant to ORS Chapter 215." The subject property (tax lots 1000 and 1203) are agricultural land as defined by Goal 3 and were subject to EFU zoning pursuant to ORS 215 when acquired by the claimant on February 28, 1975 and May 25, 1980.<sup>4</sup> At those times, the state standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that are "appropriate for the continuation of the existing commercial agricultural enterprise in the area" (Statewide Planning Goal 3). Further, ORS 215.263 (1973 and 1979 editions) 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 tax lots 1000 and 1203 when the claimant acquired them in 1975, and 1980, was limited to land divisions done consistent with Goal 3 that required the resulting parcels to be: (1) appropriate for the continuation of the existing commercial agricultural enterprise in the areas;" and (2) shown to comply with the legislative intent set forth in ORS 215.263. (See endnote <sup>1</sup>).

As for the dwellings allowed under EFU zoning as required by Goal 3 on the dates of acquisition in 1975, and 1980, farm dwellings were allowed if determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 and 1979 editions). Non-farm dwellings were subject to ORS 215.213(3) (1973 and 1979 editions).

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<sup>3</sup> Statewide Planning Goal 3 became effective on January 25, 1975, and was applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of the Clackamas County's regulations on December 31, 1981. See *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 569 (1977), *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978), *Jurgenson v. Union County*, 42 Or App 505 (1979), and *Alexanderson v. Polk County*, 289 Or 427, rev den, 290 Or 137 (1980)). After the County's plan and land use regulations were acknowledged by 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)).

<sup>4</sup> According to the claim, the subject property was zoned RA-1 until it was ultimately rezoned on June 18, 1979, to EFU-20. On December 11, 1981, the Commission determined that County's revised EFU-20 Zone complied with Goal 3 because the County included the proper standards for land divisions. (See Commission Continuance Order, December 31, 1981, and Department of Land Conservation and Development October 23, 1981, Report, pp. 9-13.)

No information has been presented in the claim to show that the desired approximately one-acre parcel development cited by the claimant complies with the "commercial" standard for farm parcels under Goal 3 or the standards for non-farm parcels under ORS 215.263 (1973 edition).<sup>5</sup>

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

### **Conclusions**

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3 (Agricultural Lanes) and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33, were all enacted after Jacque Parsons acquired the properties in 1975, and 1980, and do not allow the division of the property, thereby restricting the use of the property relative to the uses allowed when the property was acquired in 1975, and 1980.

The claim is based on the assumption that the County's RA-1 zone was the governing land use regulation when the claimant acquired tax lot 1000 on February 25, 1975. However, because Clackamas County's RA-1 zone had not been acknowledged by the Commission at the time the claimant acquired tax lot 1000, the Goal 3 "commercial" standards for farmland division and the standards for new parcels under ORS 215.263 (1973 edition) applied to tax lot 1000 when the claimant acquired it on February 25, 1975.

With regard to tax lot 1203, which the claimant acquired in 1980, the EFU-20 zone that applied to this tax lot also was not acknowledged by the Commission, and, therefore, is also subject to compliance with the Goal 3 standards.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimant has identified. There may be other laws that currently apply to the claimant's use of the property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases, it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

### **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any land use regulation described in Section V.(2) of this report must have "the effect of reducing the fair market value of the property, or any interest therein."

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<sup>5</sup> Tax lot 1203 is 0.67-acres in size and used as an access road to tax lot 1000. This tax lot is being proposed by the claimant as one of the access roads leading to the proposed division of tax lot 1000.

## **Findings of Fact**

The claim includes an estimate of \$20,100,000 (\$6,225,000 reduction caused by minimum lot size standards and \$13,875,000 caused by dwelling standards) as the reduction in the property's fair market value due to current regulations. This amount is based on the claimant's estimate of the fair market value of the subject 57-acres if divided into 30, one- to two-acre (buildable) parcels (\$7,350,000), less the fair market value of the property as a 57-acre farm (\$1,125,000); and on the claimant's estimate of the fair market value of the subject property if each of the 30 parcels were approved with a dwelling valued at \$225,000, less the fair market value of the property with the single home that is valued at \$125,000.

The claim also includes a comparative market analysis for one building lot approximately one-acre in size with a suggested price of \$245,000, and another comparative market analysis for a 57-acre farm, with residence, with a suggested price of \$1,125,000.

## **Conclusions**

As explained in Section V.(1) of this report, the current owner is Jacque Parsons, who acquired tax lot 1000 on February 28, 1975, and tax lot 1203 on May 25, 1980. The claimant does not show that the fair market value of \$20,100,000 is actually attributed to land use regulations enacted after the claimant acquired those tax lots in 1975, and 1980. Partitioning of tax lot 1000 at the time of purchase on February 28, 1975, was subject to Statewide Planning Goal 3 and the standards for new parcels under ORS 215.263 (1973 edition). The reduction in the fair market value provided in the claim was incorrectly based on Clackamas County's unacknowledged RA-1 Zone, and not on the requirements for farmland divisions under Goal 3 and ORS 215.263 (1973 edition). Until it is determined whether any additional parcels or dwellings could have been approved in 1975 under Goal 3, the specific amount of any reduction in the fair market value cannot be determined. However, based on the record for this claim, because the property cannot be divided or receive approval for any additional dwellings under current standards, but possibly could have under Goal 3 at the time of purchase in 1975, it is more likely than not that there has been some reduction in the fair market value of the subject property as a result of land use regulations enforced by the Commission or the department.

## **4. Exemptions under Section 3 of Measure 37**

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

## **Findings of Fact**

The claim is based on state land use regulations that restrict the use of the property relative to what would have been allowed in 1975, when the claimant acquired tax lot 1000 and in 1980, when the claimant acquired tax lot 1203. These provisions include Statewide Planning Goal 3 (Agricultural Lands), Goal 14 (Urbanization) and applicable provisions of ORS 215 and OAR 660, division 33, which Clackamas County has implemented through its EFU zone. With the exception of provisions of Goal 3, Goal 14 and ORS 215 in effect when the claimant acquired the properties on February 28, 1975, and May 25, 1980, respectively, none of these laws appear to be exempt under Section 3(E) of Ballot Measure 37. Provisions of Goal 3,

Goal 14 and ORS 215 in effect when the claimant acquired tax lot 1000 on February 28, 1975, and tax lot 1203 on May 25, 1980, are exempt under Section 3(E) of the Measure, which exempts laws in effect when the claimant acquired the property.

### **Conclusions**

Without a specific development proposal for the property, it is not possible for the department to determine what laws may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under Measure 37. It does appear that the general statutory, goal and rule restrictions on residential development and use of farm land apply to the claimant's use of the property, and for the most part these laws are not exempt under Section 3(E) of Measure 37. Provisions of Goal 3, Goal 14 and ORS 215 in effect when the claimant acquired tax lot 1000 in 1975, and tax lot 1203 in 1980, are exempt under Section 3(E) of the Measure and will continue to apply to this tax lot.

Other laws in effect when the claimant acquired the property are also exempt under Section 3(E) of Measure 37, and will continue to apply to the claimant's use of the property. There may be other laws that continue to apply to the claimant's use of the property that have not been identified in the claim. In some cases, it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. And, in some cases, some of these laws may be exempt under Sections 3(A) to 3(D) of Measure 37.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimant has identified. Similarly, this report only addresses the exemptions provided for under Section (3) of Measure 37, that are clearly applicable given the information provided to the department in the claim. The claimant should be aware that the less information he has provided to the department in his claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to his use of the property.

## **VI. FORM OF RELIEF**

Section 1 of Measure 37 provides for payment of compensation to an owner of private real property if the Commission or the department has enforced a law that restricts the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the current owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

### **Findings of Fact**

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimant's ability to divide the subject property and develop those parcels for residential use. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$20,100,000. However, because the

amount identified is not based on the correct development standard and because the claim does not provide an appraisal or other documentation, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Jacque Parsons, Trustee for the Parsons Family Trust, to use tax lot 1000 for a use permitted at the time he acquired this tax lot on February 28, 1975, and to use tax lot 1203 for a use permitted at the time he acquired this tax lot on May 25, 1980.

### **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 Jacque Parsons' division and development of the subject property: applicable provisions of Statewide Planning Goal 3, ORS 215 and OAR 660, division 33, enacted after the claimant acquired the property. These land use regulations will not apply to Jacque Parsons' use of tax lot 1000 only to the extent necessary to allow the claimant a use permitted at the time he acquired that tax lot on February 28, 1975, and will not apply to Jacque Parson's use of tax lot 1203 only to the extent necessary to allow the claimant a use permitted at the time he acquired that tax lot on May 25, 1980.
2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lot 1000 subject to the standards in effect on February 28, 1975, and to use tax lot 1203 subject to the standards in effect on May 25, 1980. On those dates, the subject tax lots were subject to applicable provisions of Goal 3, Goal 14 and ORS 215 then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.
4. Any use of the property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to Measure 37 including, without limitation, those laws exempted under Section (3) of the Measure.

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for her to obtain a decision under Measure 37, from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under Measure 37, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

## VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on September 28, 2005. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.

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<sup>i</sup> As noted, Goal 3 (Agricultural Lands) became effective on January 25, 1975, and was applicable to legislative land use decisions and some quasi-judicial land use decisions where site-specific goal provisions apply prior to acknowledgement of a jurisdiction's comprehensive plan and land use regulations. After the local plan and land use regulations are acknowledged by the Commission, the Statewide Planning Goals and implementing rules no longer directly apply to such local land use decisions. 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 with the substance of the rules.

The Goal 3 standard for the review of land divisions or the establishment of a minimum lot size states:

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

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

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

For further guidance on the interpretation and application of this standard and rule see *Kenagy v. Benton County*, 6 Or LUBA 93 (1982); *Goracke v. Benton County*, 8 Or LUBA 128 (1983); 68 Or App 83 (1984); 12 Or LUBA 128 (1984); 13 Or LUBA 146 (1985); 74 Or App 453 (1985), *rev den* 300 Or 322 (1985); and OAR 660-05-015 and -20 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).