

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 118368  
BALLOT MEASURE 37 (CHAPTER 1 )  
OREGON LAWS 2005) OF  
WILD HARE RANCH, INC., CLAIMANT )

Claimant: Wild Hare Ranch, Inc. (the Claimant)

Property: Tax Lots 300, 500, 1000, 1100, and 1200, T.3S, R.1E, Section 30, 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 Wild Hare Ranch, Inc.'s division and establishment of dwellings on the 167  
acres of the subject property included in tax lots 300, 500 and 1100: applicable provisions of  
Statewide Planning Goal 3 (Agricultural Lands), ORS 215.263, 215.284 and 215.780, and  
applicable provisions of OAR 660, division 33, enacted after May 6, 1993. These land use  
regulations will not apply to the claimant's use of the property only to the extent necessary to  
allow Wild Hare Ranch, Inc. a use permitted at the time the corporation acquired the property on  
May 6, 1993.

In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws  
to Wild Hare Ranch, Inc.'s establishment of dwellings on the 82.69 acres of the subject property  
included in tax lots 1000 and 1200: applicable provisions of Statewide Planning Goal 3  
(Agricultural Lands), ORS 215.284 and applicable provisions of OAR 660, division 33 enacted

after December 28, 1993. These land use regulations will not apply to the claimant's use of the property only to the extent necessary to allow Wild Hare Ranch, Inc. a use permitted at the time the corporation acquired the property on December 28, 1993.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the property subject to the standards in effect when the claimant acquired tax lots 300, 500 and 1100 on May 6, 1993, and tax lots 1000 and 1200 on December 28, 1993. On those dates, these properties were subject to applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and applicable provisions of OAR 660 divisions 5 and 33 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 the corporation 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 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  
DLCD

Dated this 21<sup>st</sup> day of October, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:

  
Dugan Petty, Deputy Administrator  
DAS, State Services Division

Dated this 21<sup>st</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.”

**FOR INFORMATION ONLY**

The Marion County Circuit Court has issued an opinion declaring that 2004 Oregon Ballot Measure 37 (2005 Or Laws chapter 1) is invalid. As of the date of this order, the court has not entered a judgment that gives legal effect to the court's opinion. Once a judgment is entered by the court, any rights granted by this order may be void or voidable.

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

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

October 21, 2005

**STATE CLAIM NUMBER:** M118368

**NAME OF CLAIMANT:** Wild Hare Ranch, Inc.

**MAILING ADDRESS:** 25355 NE Glass Road  
Aurora, Oregon 97002

**PROPERTY IDENTIFICATION:** Township 3S, Range 1E, Section 30  
Tax Lots 300, 500, 1000, 1100, and 1200  
Clackamas County

**OTHER CONTACT INFORMATION:** Thomas L. Thomsen, Jr., President  
25355 NE Glass Road  
Aurora, Oregon 97002

Edward Trompke  
Jordan Schrader, PC  
Post Office Box 230669  
Portland, Oregon 97281

**DATE RECEIVED BY DAS:** April 28, 2005

**180-DAY DEADLINE:** October 25, 2005

**I. SUMMARY OF CLAIM**

The claimant, Wild Hare Ranch, Inc., seeks compensation in the amount of \$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 five tax lots, totaling 249.69 acres, into 20-acre parcels and to develop a dwelling on each parcel. The property is located at 15750 NE Browndale Farm Road and 25130 NE Eilers Road near Aurora, 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 for tax lots 300, 500 and 1100 and valid in part for tax lots 1000 and 1200. The department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to Wild Hare Ranch, Inc.'s establishment of dwellings on the 82.69-acre property included in tax lots 1000 and 1200: Statewide Planning Goal 3 (Agricultural Lands), ORS 215.284 and applicable provisions of OAR 660, division 33 enacted after December 28, 1993. These laws will not apply to the claimant only to the extent necessary to allow the corporation a use of tax lots 1000 and 1200 permitted at the time Wild Hare Ranch, Inc. acquired those tax lots on December 28, 1993. (See the complete recommendation in Section VI. of this report.)

For tax lots 300, 500 and 1100, the department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to Wild Hare Ranch, Inc.'s division of the 167-acre property included in tax lots 300, 500 and 1100 or to the establishment of dwellings on those tax lots: Statewide Planning Goal 3 (Agricultural Lands), ORS 215.263, 215.284 and 215.780, and applicable provisions of OAR 660, division 33 enacted after May 6, 1993. These laws will not apply to the claimant only to the extent necessary to allow the corporation a use of tax lots 300, 500 and 1100 permitted at the time that Wild Hare Ranch, Inc. acquired those tax lots on May 6, 1993. (See the complete recommendation in Section VI. of this report.)

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

### **Comments Received**

On May 18, 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, four written comments, evidence or information were received in response to the 10-day notice.

The comments are relevant to whether the restriction of the claimant's use of the property reduces the fair market value of the property. The comments have been considered by the department in preparing this report. (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 27, 2005, for processing under OAR 125, division 145. The claim identifies Clackamas County Exclusive Farm Use (EFU) zoning, ORS 215 (including ORS 215.780), OAR 660-033-0100 and -0160, as laws that restrict 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 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 subject property contains five tax lots in Clackamas County, described as tax lots 300, 500, 1000, 1100 and 1200 of Township 3S, Range 1E, Section 30.

The claimant, Wild Hare Ranch, Inc., acquired tax lots 300, 500 and 1100 from Thomas Thomsen on May 6, 1993, as reflected by a Bargain and Sale Deed included with the claim.<sup>1</sup> Wild Hare Ranch, Inc. acquired tax lots 1000 and 1200 from Thomas Thomsen on December 28, 1993, as reflected by a Warranty Deed included with the claim. A copy of a Lot Book Service Report dated April 22, 2005, indicates that Wild Hare Ranch, Inc. is the current owner of the subject property as of April 14, 2005. Wild Hare Ranch, Inc. is an active corporation registered with the Oregon Secretary of State.

## **Conclusions**

The claimant, Wild Hare Ranch, Inc., is an “owner” of tax lots 300, 500 and 1100, as that term is defined by Section 11(C) of Ballot Measure 37, as of May 6, 1993. Wild Hare Ranch, Inc. is also an “owner” of tax lots 1000 and 1200 as of December 28, 1993.<sup>2</sup>

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

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

## **Findings of Fact**

The claim states that Clackamas County’s zoning and development ordinance “Deleted EFU-20 zoning to implement EFU in accordance with 1994 OAR provisions.” The claim also states that ORS 215.780 and OAR 660 division 33, “established minimum 80-acre EFU and restricted subdivision and construction of additional dwellings.” The claim specifically cites ORS 215.780 and OAR 660-033-0100 and -0160, and LUBA regulations.<sup>3</sup>

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<sup>1</sup> Thomas Thomsen, Jr., the president of Wild Hare Ranch, Inc., acquired tax lots 300, 500 and 1100 on September 16, 1992, by Personal Representatives Deed. Mr. Thomsen also acquired tax lots 1000 and 1200 on June 22, 1993, by a second Personal Representatives Deed. (See Deeds included in the claim.)

<sup>2</sup> Although a corporation can be a “family member” of an owner as that term is defined by Section 11(C) of Ballot Measure 37, an “owner” that is a corporate entity cannot claim an individual as a “family member,” as defined in Section 11(A) of the Measure. Therefore, Thomas Thomsen, who transferred the subject property into Wild Hare Ranch, Inc., cannot be considered a “family member” of Wild Hare Ranch, Inc.

<sup>3</sup> The Land Use Board of Appeals is established to decide appeals of land use decisions. Neither the establishment of the Board nor the actions of LUBA creates land use regulations that restrict the use of private real property. OAR 660-033-0160 establishes the date upon which the rule became effective. It also does not restrict the use of private real property.

The claim is based generally on Clackamas County's current 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.<sup>4</sup> 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). OAR 660-033-0100 establishes minimum standards for the creation of new parcels on lands designated as "agricultural lands" as defined under OAR 660, division 33, and implements ORS 215.780. ORS 215.263 (2003 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone. Under ORS 215.263, new parcels for non-farm dwellings are not authorized in the Willamette Valley.

Between August 7, 1993 and March 1, 1994, OAR 660-03-130(1) interpreted the statutory standard for a primary farm dwelling under ORS 215.283(1)(f). For high-value farmland, this rule required that the dwelling be situated on a farm or ranch that produced an annual gross income less than the current standard in OAR 660-033-0135(7).<sup>5</sup> The current standard in OAR 660-033-0135(7) (applicable to farm dwellings on high-value farmland) became effective on March 1, 1994, and also 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.) Under ORS 215.284(1), non-farm dwellings are only authorized on a lot or parcel predominantly composed of NRCS Class IV to VIII soils.

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<sup>4</sup> The claimant's property is "Agricultural Land" because it contains NRCS (Natural Resources Conservation Service) Type I-IV Soils. The property predominantly consists of Canderly sandy loam (map unit 12A and 12B, capability subclass IIs and Iie), Chehalis silt loam (map unit 16, capability subclass IIw), Cove silty clay loam (map unit 25, capability subclass IVw), Humaquepts, ponded (map unit 42, capability subclass IIIw), Latourell loam (map unit 53A, capability subclass I), Newberg fine sandy loam (map unit 67, capability subclass IIw), Quatama loam (map units 71A, 71B, 71C, capability subclass IIw, Iie and IIIe), Woodburn silt loam (map unit 91A and 91B, capability subclass IIw and Iie) and Xerochrepts and Haploxerolls (map unit 92F, capability subclass VIIe).

<sup>5</sup> The property is "high-value farmland" as defined under ORS 215.710 (see footnote #4).

The claimant acquired tax lots 300, 500 and 1100 on May 6, 1993, and tax lots 1000 and 1200 on December 28, 1993. At that time, the property was zoned EFU-20 by Clackamas County, a zone in compliance with the Statewide Planning Goal 3 (Agricultural Lands) and OAR 660, division 5 (1986 edition). However, as of November 4, 1993, tax lots 1000 and 1200 were subject to ORS 215.780 (Chapter 792, Oregon Laws 1993) and therefore were subject to an 80-acre minimum lot size and not the provisions in the County's EFU-20 zone. For farm and non-farm dwellings on November 4, 1993, tax lots 1000 and 1200 were subject to the then applicable provisions of OAR 660-033-0130(1) or OAR 660-033-0130(4) instead of the provisions in the County's acknowledged EFU-20 zone. However, for non-farm dwellings, the standards in OAR 660-033-0130(4) were essentially the same as those in County's acknowledged EFU-20 zone. It is not clear from materials submitted with the claim that the claimant could have established the desired dwellings on tax lots 1000 and 1200 at the time that Wild Hare Ranch, Inc. acquired them on December 28, 1993, under OAR 660-033-130(1) or (4).

As for tax lots 300, 500 and 1100, on May 6, 1993, Clackamas County's acknowledged EFU-20 zone permitted new parcels of at least 20 acres in size or of as large as the acreage supporting the typical commercial farm unit in the area, whichever is larger (Section 401.09, Clackamas County Order No. 92-1020 dated October 8, 1992). Sections 401.04(A) and 401.05(A) of the same Order provided for the establishment of dwellings in conjunction with a farm use. It is not clear from materials submitted with the claim that the claimant could have divided tax lots 300, 500 and 1100 and created the desired parcels or established the desired dwellings for these tax lots at the time that Wild Hare Ranch, Inc. acquired them on May 6, 1993.

### **Conclusions**

For tax lots 1000 and 1200, the zoning requirements and minimum lot size established by Statewide Planning Goal 3 (Agricultural Lands) and ORS 215.780 applicable to lands zoned EFU were all enacted prior to Wild Hare Ranch, Inc.'s acquisition of these tax lots on December 28, 1993, and thus, these tax lots are not currently subject to a land use regulation that restricts the division of these tax lots relative to what was permitted on December 28, 1993. However, with respect to farm dwellings, OAR 660-033-0135(7) limits the establishment of farm dwellings, thereby restricting the use of these tax lots relative to the establishment of a farm dwelling allowed when they were acquired by the claimant on December 28, 1993. It is possible that these tax lots could have qualified for a dwelling under the then applicable provisions of OAR 660-033-0130(1).

For tax lots 300, 500 and 1100, the zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3 (Agricultural Lands) and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 5 (1986 edition), were all enacted prior to Wild Hare Ranch, Inc.'s acquisition of these tax lots on May 6, 1993. Amendments to Goal 3 and ORS 215 enacted after the claimant acquired the property limit the division and development of the property, thereby restricting the use of the property relative to the uses allowed when the property was acquired by the claimant in 1993.

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

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

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

#### **Findings of Fact**

The claim includes an estimate of \$100,000 as the reduction in the property's fair market value due to current regulations. The basis for the claimant's estimate of the market value of the property is not clear in the claim materials submitted. No appraisal or other documentation of the estimate was provided by the claimant.

#### **Conclusions**

As explained in Section V.(1) of this report, the current owner is Wild Hare Ranch, Inc., which acquired tax lots 300, 500 and 1100 on May 6, 1993 and tax lots 1000 and 1200 on December 28, 1993. Under Ballot Measure 37, Wild Hare Ranch, Inc. is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws adopted since the claimant acquired the property restrict division and residential development of tax lots 300, 500 and 1100, and may restrict the residential development of tax lots 1000 and 1200. The claimant estimates the reduction in value due to the restrictions to be \$100,000.

Without an appraisal or other documentation of reduction in value, and without verification of uses permitted when the claimant 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 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 cites state land use regulations that restrict the use of the property relative to what would have been allowed in 1993 when the property was acquired by Wild Hare Ranch, Inc. These provisions include Statewide Planning Goal 3 (Agricultural Lands), and applicable provisions of ORS 215 and OAR 660, division 33, which Clackamas County has implemented through its EFU zone. These laws are not exempt under Section 3(E) to the extent they were enacted or adopted after the claimant acquired the property. Provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and OAR 660, divisions 5 and 33, adopted before the claimant acquired tax lots 300, 500 and 1100 on May 6, 1993 and before the claimant acquired tax lots 100 and 1200 on December 28, 1993, are exempt under Section 3(E) of the Measure.

## **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. These laws are not exempt under Section 3(E) of Measure 37 to the extent they were enacted or adopted after the claimant acquired tax lots 300, 500 and 1100 on May 6, 1993, and tax lots 1000 and 1200 on December 28, 1993. Provisions of Goal 3, ORS 215 and OAR 660, divisions 5 and 33 in effect when the claimant acquired tax lots 300, 500 and 1100 on May 6, 1993, and tax lots 1000 and 1200 on December 28, 1993 are exempt under Section 3(E) of the Measure and will continue to apply to the property.

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 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**

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 and develop residential dwellings on tax lots 300, 500 and 1100 or to develop residential dwellings on tax lots 1000 and 1200. The claim asserts that the laws enforced by the Commission or department reduce the fair market value of the subject property by \$100,000. 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, and without verification of uses permitted when the claimant acquired each of the tax lots, 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 Wild Hare Ranch, Inc. to use the subject property for a use permitted at the time the claimant acquired tax lots 300, 500 and 1100 on May 6, 1993 and tax lots 1000 and 1200 on December 28, 1993 (tax lots 1000 and 1200).

### **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 Wild Hare Ranch, Inc.'s division and establishment of dwellings on the 167 acres of the subject property included in tax lots 300, 500 and 1100: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215.263, 215.284 and 215.780, and applicable provisions of OAR 660, division 33, enacted after May 6, 1993. These land use regulations will not apply to the claimant's use of the property only to the extent necessary to allow Wild Hare Ranch, Inc. a use permitted at the time the corporation acquired the property on May 6, 1993.

In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Wild Hare Ranch, Inc.'s establishment of dwellings on the 82.69 acres of the subject property included in tax lots 1000 and 1200: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215.284 and applicable provisions of OAR 660, division 33 enacted

after December 28, 1993. These land use regulations will not apply to the claimant's use of the property only to the extent necessary to allow Wild Hare Ranch, Inc. a use permitted at the time the corporation acquired the property on December 28, 1993.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the property subject to the standards in effect when the claimant acquired tax lots 300, 500 and 1100 on May 6, 1993, and tax lots 1000 and 1200 on December 28, 1993. On those dates, these properties were subject to applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and applicable provisions of OAR 660 divisions 5 and 33 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 the corporation 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 October 4, 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.