

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

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

September 2, 2005

**STATE CLAIM NUMBER:** M120089  
Report A

**NAMES OF CLAIMANTS:** O. Keith and Conida Cyrus

**MAILING ADDRESS:** 16850 Jordan Road  
Sisters, Oregon 97759

**PROPERTY IDENTIFICATION:** Township 15S, Range 10E, Section 13,  
Tax Lots 500, 501, 701 and 702,  
Deschutes County

**OTHER CONTACT INFORMATION:** Edward Fitch  
P.O. Box 457  
Redmond, Oregon 97756

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

**180-DAY DEADLINE:** September 6, 2005

**I. SUMMARY OF CLAIM**

The claimants, O. Keith and Conida Cyrus, seek compensation in the amount of \$2,500,000 for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide and develop the approximately 157-acre properties into five-acre lots. The properties consist of four tax lots located at 17198 and 17204 Highway 126 in Deschutes County. (See claim.)

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid as to tax lots 500 and 701. 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 O. Keith Cyrus' division of tax lots 500 and 701 for residential development: Statewide Planning Goals 3 (Agricultural Lands), ORS 215, and applicable provisions of OAR 660, division 33. These laws will not apply to the claimant,

only to the extent necessary to allow O. Keith Cyrus a use of the properties permitted at the time he acquired tax lot 500 in 1961 and tax lot 701 in 1973. (See the complete recommendation in Section VI. of this report.)

Based on the preliminary findings and conclusions set forth below, the department has determined that the claim is not valid as to tax lots 501 and 702 because the claimants have not demonstrated that laws enforced by the department or the commission restrict the use of the properties relative to how the claimants could have used the properties when they first acquired on June 28, 1976. Department staff recommend that the claim be denied as to tax lot 501 and 702.

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

#### **Comments Received**

On March 17, 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 is relevant to whether the laws that are the basis for the claim are exempt under Section 3 of Measure 37, in that it questions whether the soils involved can handle the septic systems required by the density of the development and whether the septic systems will threaten subsurface water supplies. The comment has been considered by the department in preparing this report. (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 March 10, 2005, for processing under OAR 125, division 145. The claim identifies "all state land use goals and guidelines and every ordinance of Deschutes County since 1971/72 that restricts ability to divide and develop 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**

Claimant O. Keith Cyrus, acquired tax lot 500 on January 24, 1961, and tax lot 701 on April 1, 1973, as reflected by Warranty Deeds included with the claim. O. Keith Cyrus and Conida Cyrus acquired tax lots 501 and 702 on June 28, 1976. These transactions are documented by Warranty Deeds, contracts of sale and Title Reports included with the claim. Title Reports dated 2005, and information from the Deschutes County Assessor’s office indicate that O. Keith and Conida Cyrus are the current owners and substantiate the claimants’ continued ownership of the properties.

### **Conclusions**

The claimants, O. Keith Cyrus and Conida Cyrus, are “owners” of tax lots 501 and 702, as that term is defined by Section 11(C) of Ballot Measure 37, as of June 28, 1976. O. Keith Cyrus is “an owner” of tax lots 500 and 701, as that term is defined by Section 11(C) of Ballot Measure 37, as of January 24, 1961 for tax lot 500 and as of April 1, 1973 for tax lot 701.

### **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**

Tax lot	Acreage	Current zoning	Acquisition Date	Zoning at date of Acquisition
15-10-13 500	10.5	EFU	January 24, 1961	None
15-10-13 501	2.2	MUA-10	June 28, 1976	A-1
15-10-13 701	3.6	EFU	April 1, 1973	A-1
15-10-13 702	139.06	MUA-10	June 28, 1976	A-1

The claim identifies “All state land use goals and guidelines and every ordinance of Deschutes County adopted since 1971/72 that restricts ability to divide and develop properties.” The claim indicates that the claimants intend to divide the properties into 5-acre parcels.<sup>1</sup> Tax lots 500 and 701 are currently zoned Exclusive Farm Use (EFU). Tax lots 501 and 702 are currently zoned Multiple Use Agriculture (MUA-10).

As to tax lots 500 and 701, the claim is based on Deschutes County’s current EFU Zone and the applicable provisions of state law that require such zoning. Tax lots 500 and 701 are zoned EFU as required by Goal 3 in accord with OAR 660, division 33 and ORS 215 because the 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

---

<sup>1</sup> The department notes that tax lots 501 and 701 are already less than 5-acres. The department is not certain what the claimants’ intent is as to these properties.

adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

The claimant, O. Keith Cyrus, acquired tax lot 500 in January 1961, prior to the establishment of the Statewide Planning Goals and their implementing statutes and rules. No County zoning applied to the subject property in 1961.

O. Keith Cyrus acquired tax lot 701 on April 1, 1973. In 1973, the County's A-1 Exclusive Agricultural zone applied to tax lot 701. The A-1 zone allowed buildings and uses customarily provided in conjunction with farm use. The minimum lot size allowed was five-acres, with some exceptions. On April 1, 1973, no statewide planning goals applied to tax lot 701. Provisions of ORS 215 then in effect were applicable to the property.

As to Tax lots 501 and 702, the claim is based on Deschutes County's current MUA-10, Multiple Use Agriculture zone. MUA-10 is a rural residential zone under the Deschutes County Comprehensive Plan. The MUA-10 zone requires a minimum of ten-acres for the creation of new lots or parcels (Deschutes County Zoning Ordinance, section 18.32.040), in accord with Statewide Planning Goal 14.

As a result of a 1986 Oregon Supreme Court decision<sup>2</sup>, in 2000 the Commission amended Statewide Planning Goal 14 (Urbanization) and adopted OAR 660-004-0040, which became effective on October 4, 2000. The rule provides that after October 4, 2000, a County minimum lot size requirement in RR zone may not allow a smaller minimum lot size without taking an exception to Goal 14 (OAR 660-004-0040(6)). This rule prevents the subject property from being divided into lots smaller than 10-acres without an exception to Goal 14.

The claimants acquired tax lots 501 and 702 on June 28, 1976, when they were zoned Exclusive Agricultural (A-1) by Deschutes County, a qualified EFU zone under ORS 215. Under the A-1 zone, there was a five-acre minimum parcel size for the creation of new lots or parcels. However, the County's A-1 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. The Commission acknowledged the Deschutes County Comprehensive Plan and land use regulations as complying with the Statewide Planning Goals on April 31, 1981. Since the Commission had not acknowledged Deschutes County's comprehensive plan and land use regulations, including the A-1 zone, when the Cyruses acquired the property on June 28, 1976, Statewide Planning Goal 3 applied directly to property on the date of acquisition.<sup>3</sup> In 1976, the State standards for a land division involving

---

<sup>2</sup> *1000 Friends of Oregon v. LCDC (Curry County)*, 301 OR App 447 (1986)

<sup>3</sup> Statewide Planning Goals 3 and 4 became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi judicial land use decisions where site specific goal provisions applied prior to the Commission's acknowledgment of the County's Goal 4 program (*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), and *Alexanderson v. Polk County*, 289 Or 427, rev. denied, 290 Or 137 (1980) and *Perkins v. City of Rajneeshpuram*, 300 Or 1, (1985). After the local plan and land use regulations are acknowledged by LCDC, the statewide planning goals and implementing rules no longer directly apply to such local land use decisions, *Byrd v. Stringer*, 295 Or 311, (1983). However, insofar as the state and local provisions are materially the same in substance, the applicable statutes and 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).

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 tax lots 501 and 702 when the Cyruses acquired them in 1976 was limited to land divisions done consistent with Goal 3 that 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 endnote<sup>1</sup>.)

As for dwellings allowed under EFU zoning as required by Goal 3 on the date of acquisition of tax lots 501 and 702 in 1976, farm dwellings were allowed if determined to be “customarily provided in conjunction with farm use” under ORS 215.213(1)(e) (1975 edition) and ORS 215.213(3) (1975 edition)<sup>4</sup> authorized a non-farm dwelling only where the dwelling is compatible with farm uses, consistent with the intent of ORS 215.243, does not interfere seriously with accepted farming practices on adjacent lands, does not materially alter the stability of the land use pattern for the area, and is situated on land that is generally unsuitable for production of farm crops and livestock. ORS 215.213(3) (1975 edition). Before a farm dwelling could be established on agricultural land, the farm use to which the dwelling relates must “be existing.” Further, approval of a farm dwelling required that the dwelling be situated on a parcel wholly devoted to farm use.

No information has been provided showing that the claimants’ request for 5-acre parcels complies with either the Goal 3 standard for lot size for farm parcels, or the standards for new parcels under ORS 215.263 (1975 Edition). Nor has any information been provided to establish that additional dwellings would comply with the approval standards for dwellings under ORS 215.213, in effect at the time the Cyrus’s purchased the property in 1976.

## **Conclusions**

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 33 were all enacted after O. Keith Cyrus acquired ownership of tax lot 500 in 1961, 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 1961.

The zoning requirements, minimum lot size and dwelling standards established by provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33 were enacted after O. Keith Cyrus acquired ownership of tax lot 701 in April 1973, and do not allow the division of the property, thereby restricting the use of the property relative to the uses allowed when the

---

<sup>4</sup> *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).

property was acquired by him in 1973. In 1973, tax lot 701 was subject to the requirements of the County's A-1, Exclusive Agricultural zone, which was adopted pursuant to the provisions of ORS 215 then in effect.

As described above, when the claimants acquired tax lots 501 and 702 in 1976, Goal 3 (Agricultural Land) applied directly to the property, rather than the 5-acre minimum lot size of the A-1 Exclusive Agriculture zone. Since 1976, the property has been rezoned to a rural residential zone (MUA-10) which allows 10-acre minimum lot sizes. Current lot size standards established by amendments to Statewide Planning Goal 14 and OAR 660-004-0040 do not allow the division of the property into parcels less than 10-acres. There is no information to demonstrate that 5-acre lots would have been allowed under the Goal 3 requirements that applied to the properties when they were acquired in 1976. There is nothing in the record to show that the current zone, which allows the property to be divided into 10-acre lots for rural residential use is more restrictive than the provisions of Goal 3 and ORS 215 in place at the time the claimants acquired tax lots 501 and 702 in 1976.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the use that the claimants have identified. There may 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 the use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

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

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

### **Findings of Fact**

The claim includes an informal estimate of \$2,500,000 as the reduction in the property's fair market value as a result regulations enacted after the claimants acquired the four subject properties. This estimate is based on the claimants' "information and belief." The calculation (gross developed value minus current value and development costs) for loss of fair market value was made for the four tax lots, in aggregate.

### **Conclusions**

As explained in section V. (1) of this report, the current owners are O. Keith and Conida Cyrus who acquired tax lots 500, 501, 701, and 702 on various dates from 1961 through 1976. Under Ballot Measure 37, the Cyruses 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, land use laws restrict the use of tax lots 500 and 701 relative to how they could be used when O. Keith Cyrus acquired them in 1961

and 1973, respectively. The claimants have not demonstrated that land use laws restrict the use of tax lots 501 and 702 relative to how they could be used when they were acquired in 1976. The claimants assert a reduction in fair market value of \$2,500,000 due to land use restrictions on all four parcels.

Without an appraisal based on the value of 5-acre lots on tax lots 500 and 701, or other documentation, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that there has been some reduction in the fair market value of tax lots 500 and 701 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 includes a general reference to any state land use regulations that restrict the use of the property after 1971 or 1972. These provisions include Statewide Planning Goal 3 (Agricultural Lands), Goal 14 (Urbanization) and applicable provisions of ORS 215 and OAR 660, division 4 and division 33, which Deschutes County has implemented through its EFU and MUA zones. With the exception of provisions of ORS 215 in effect prior to acquisition dates by the claimants, and with the exception of provisions of Statewide Planning Goals 3 and 14 and their implementing statutes and rules in place prior to the claimants' acquisition of tax lots 501 and 702 in 1976, none of these laws appear to be exempt under Section 3(E) of Ballot Measure 37.

A comment on this claim by a neighbor raises questions of harm to well water supplies and soils based on the density of proposed development and septic system requirements for same. Public healthy and safety regulations are exempt from Measure 37.

#### **Conclusions**

Without a specific development proposal for the property, it is not possible for the department to determine what laws may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under Measure 37. It does appear that the general statutory, goal and rule restrictions on residential development and use of farm land apply to the claimants' use of the property, and for the most part these laws are not exempt under section 3(E) of Measure 37. Provisions of ORS 215 in effect when the claimants acquired the property and the provisions of Statewide Planning Goals 3 and 14 and their implementing statutes and rules in place when the claimants acquired tax lots 501 and 702 in 1976 are exempt under section 3(E) of the Measure and will continue to apply to the property. Other laws in effect when the claimants acquired the property are also exempt under Section 3(E) of Measure 37, and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to the

claimants' use of the property that have not been identified in the claim. In some cases it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. Some of those laws may be exempt under subsections 3(A) to 3(D) of Measure 37. In particular, in addition to others that have not yet been identified, some regulations may be exempt under Section 3(B) of Measure 37, based on public health and safety requirements, including those related to siting septic systems and protection for drinking water required in conjunction with residential development.

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

## **VI. FORM OF RELIEF**

Section 1 of Measure 37 provides for payment of compensation to an owner of private real property if the Commission or 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 division of tax lots 500 and 701 into parcels or lots, and the use of the property for residential purposes. The claimants cannot create the desired 5-acre lots out of the subject property, or develop those lots for residential use because laws enacted after the claimants acquired the property prohibit lot sizes that small. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the 4 parcels that are the subject of this claim by \$2,500,000. However, because the claim does not provide an appraisal or other specific documentation to establish how the specified restrictions reduce the fair market value of the property, and because the claimants have not established that two of the four subject tax lots are subject to any relief under Measure 37, 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 tax lots 500 and 701 to some extent.

The department finds that the claimants have not provided information to determine that land use laws adopted since 1976 when the claimants acquired tax lots 501 and 702 restrict the use of the subject property relative to how it could have been used in 1976 under the then applicable

requirements of Statewide Planning Goal 3. As explained in Section V.(2) of this report, the claimants acquired tax lots 501 and 702 on June 28, 1976. At that time, the property was zoned A-1 subject to Statewide Planning Goal 3 and the applicable goal and statutory standards for new farm and non-farm parcels and dwellings as explained in that section.<sup>5</sup>

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 O. Keith Cyrus to use tax lots 500 and 701 at the time he acquired them on January 24, 1961, and April 1, 1973, respectively.

### **Conclusion**

Based on the record, the department recommends that the claim be denied as to tax lots 501 and 702 and approved as to tax lots 500 and 701, subject to the following terms:

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to O. Keith Cyrus' division and development of the 10.5 and 3.6-acre tax lots 500 and 701: applicable provisions of Statewide Planning Goals 3, ORS 215, and OAR 660, division 33, enacted after January 1961 (tax lot 500), and April 1, 1973 (tax lot 701). These land use regulations will not apply to O. Keith Cyrus' use of his property only to the extent necessary to allow the claimant a use permitted at the time he acquired tax lot 500 on January 21, 1961 and tax lot 701 on April 1, 1973.
2. The action by the State of Oregon provides the state's authorization to O. Keith Cyrus to use tax lots 500 and 701 subject to the standards in effect on January 21, 1961 and April 1, 1973. On April 1 1973, tax lot 701 was subject to the provisions of 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 claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.
4. Any use of the property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to Measure 37 including, without limitation, those laws exempted under section (3) of the Measure.
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the property, it may be necessary for them to obtain a decision under

---

<sup>5</sup> An indication of how these land division and dwelling standards applied to the property when it was acquired and that comply with the Goal 3 minimum lot size standard, ORS 215.263 and the farm and non-farm dwelling standards under ORS 215.213 are the land division and dwelling standards in the County's acknowledged EFU zone

Measure 37 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under Measure 37 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimants.

## VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on August 15, 2005. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.

### Endnote

<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, after acknowledgment, interpretation of the local county code provisions must be consistent with the goal and rule standards with which they were acknowledged to be in compliance.

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

"Such minimum lot sizes as are utilized for any farm use zones shall be appropriate for the continuation of the existing Commercial Agricultural Enterprise within the area."

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

In 1982, the policy paper and court decisions were incorporated into an administrative rule to guide the interpretation and application of the Goal 3 minimum lot size standard (see OAR 660, division 5, specifically rules 15 and 20 effective July 21, 1982).

For further guidance on the interpretation and application of this standard and rule see *Kenagy v. Benton County*, 6 Or LUBA 93 (7/16/82); *Goracke v. Benton County*, 8 Or LUBA 128 (6/8/83); 68 Or App 83 (5/9/84); 12 Or LUBA 128 (9/26/84); 13 Or LUBA 146 (4/4/85); 74 Or App 453 (7/17/85), rev. denied 300 Or 322 (11/26/85); and OAR 660-05-015 and 020 as amended effective June 7, 1986 (repealed effective August 7, 1993).

The 1982 administrative rule (OAR 660-05-015 and 020) was further amended to incorporate the holdings of these cases (effective June 7, 1986, and repealed effective August 7, 1993).