

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES, THE DEPARTMENT
OF LAND CONSERVATION AND DEVELOPMENT OF THE STATE OF OREGON

IN THE MATTER OF THE CLAIM)
FOR COMPENSATION UNDER)
BALLOT MEASURE 37 (CHAPTER 1,)
OREGON LAWS 2005) OF)
Arthur and Ann Hop, CLAIMANTS)

FINAL ORDER
CLAIM NO. M 121447

Claimants: Arthur and Ann Hop

Property: Tax Lot 600, T4S, R3W, Section 20,
Tax Lot 2300, T4S, R3W, Section 21, W.M., Yamhill County

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

Claimants submitted the Claim to the State of Oregon under 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 Arthur and Ann Hop's division and development of the 95.4-acre tax lot 2300 and establishment of a dwelling on tax lot 600: applicable provisions of Statewide Planning Goal 3, ORS 215, and OAR 660, division 33, enacted after February 6, 1976. These land use regulations will not apply to Arthur and Ann Hop's use of the subject properties only to the extent necessary to allow the claimants a use permitted at the time they acquired the properties on February 6, 1976.

2. The action by the State of Oregon provides the state's authorization to the claimants to use their properties subject to the standards in effect on February 6, 1976. On that date, the properties were subject to Statewide Goal 3 and applicable provisions of ORS 215 (1975 editions).

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, this order does 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 215.412 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 this order remains 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 DLCD; and (c) those laws not subject to Measure 37 including, without limitation, those laws exempted under section (3) of Measure 37.

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

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 12th day of October, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



David Hartwig, Administrator
DAS, State Services Division

Dated this 12th 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: M121447

NAMES OF CLAIMANTS: Arthur and Ann Hop

MAILING ADDRESS: 6460 Thompson Lane
Dayton, Oregon 97114

PROPERTY IDENTIFICATION: Township 4S, Range 3W, Section 20
Tax Lot 600
Township 4S; Range 3W, Section 21
Tax Lot 2300
Yamhill County

DATE RECEIVED BY DAS: April 22, 2005

180-DAY DEADLINE: October 19, 2005

I. SUMMARY OF CLAIM

The claimants, Arthur and Ann Hop, seek compensation in the amount of \$1,560,000 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 construct a dwelling on a 13.6-acre parcel (tax lot 600), and divide a 95.4-acre parcel (tax lot 2300) into four parcels and to develop a residential dwelling on each parcel. The properties are located at 6460 Thompson Lane, Dayton, in Yamhill County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to Arthur and Ann Hop's development of a dwelling on tax lot 600, and division of tax lot 2300 for residential development: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and OAR 660, division 33, enacted after February 6, 1976. These laws will not apply to the claimants only to the extent necessary to allow Arthur and Ann

Hop a use of the properties permitted at the time they acquired them in 1976. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 8, 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, no written comments were received in response to the 10-day notice.

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 land use laws that impose minimum lot sizes 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

Based on the documentation submitted with the claim, the claimants, Arthur and Ann Hop, assert that they acquired the subject properties on February 6, 1976, as reflected by a Personal Representative Deed included with the claim. Arthur and Ann Hops’ current ownership of the subject properties was confirmed by the Yamhill County Assessor’s office.

Conclusions

The claimants, Arthur and Ann Hop, are “owners” of the subject properties, as that term is defined by Section 11(C) of Ballot Measure 37, as of February 6, 1976.

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 is based generally on Yamhill County’s current Exclusive Farm Use (EFU) Zone and the applicable provisions of state law that require such zoning. The claimants’ properties are zoned EFU as required by Statewide Planning Goal 3, in accord with OAR 660, division 33 and ORS 215 because the claimants’ properties are “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, restrict the claimants from dividing the subject properties into parcels of less than 80 acres and from developing dwellings on such parcels.

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.)

Arthur and Ann Hop acquired the subject properties on February 6, 1976, after the Statewide Planning Goals were adopted in 1975, but before the Commission's acknowledgment of the Yamhill County's Comprehensive Plan and land use regulations in 1981.¹ Because the Commission had not acknowledged Yamhill County's comprehensive plan and land use regulations when Arthur and Ann Hop acquired the property on February 6, 1976, Statewide Planning Goal 3 applied directly to properties on the date of acquisition.² In 1976, the State standards for a land division involving property where the local zoning was not acknowledged were that the resulting parcels must be of a size that are "appropriate for the continuation of the existing commercial agricultural enterprise in the area" (Statewide Planning Goal 3). Further, ORS 215.263 (1975 edition) required that all divisions of land subject to the provisions for EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy).

¹ The property was not zoned by Yamhill County when the claimants acquired it. Five days after the claimants acquired the property, it was zoned EFU-40.

² 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 where site specific goal provisions applied prior to the Commission's acknowledgment of the County's Goal 3 program on February 9, 1979 (*Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977), *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978), *Jurgenson v. Union County*, 42 Or App 505 (1979), *Alexanderson v. Polk County*, 289 Or 427, *rev den*, 290 Or 137 (1980) and *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985)). After the County's plan and land use regulations were acknowledged by Commission, the Statewide Planning Goals and implementing rules no longer directly applied to such local land use decisions, (*Byrd v. Stringer*, 295 Or 311 (1983)). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same in substance, the applicable rules must be interpreted and applied by the county in making its decision. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

Thus, the opportunity to divide the property when the Hops acquired it in 1976, was limited to land divisions done consistent with Goal 3, which required the resulting farm or non-farm parcels to be: (1) “appropriate for the continuation of the existing commercial agricultural enterprise in the area;” and (2) shown to comply with the legislative intent set forth in ORS 215.243. (See endnote.¹)

As for dwellings allowed under EFU zoning as required by Goal 3 on the date of acquisition 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). ORS 215.213(3) (1975 edition) authorized a non-farm dwelling only where the dwelling was compatible with farm uses, consistent with the intent of ORS 215.243, did not interfere seriously with accepted farming practices on adjacent lands, did not materially alter the stability of the land use pattern for the area, and was situated on land that is generally unsuitable for production of farm crops and livestock. ORS 215.213(3) (1975 edition).³ Before a farm dwelling may be established on agricultural land, the farm use to which the dwelling relates must “be existing.”⁴ Further, approval of a farm dwelling required that the dwelling be situated on a parcel wholly devoted to farm use.

No information has been provided showing that the claimants’ request to divide and develop tax lot 2300 complies with either the Goal 3 standard for farm parcel size, or the standards for new parcels under ORS 215.263 (1975 edition). Nor has any information been provided concerning whether additional dwellings comply with the approval standards for dwellings under ORS 215.213, in effect at the time Arthur and Ann Hop acquired the property in 1976.

Conclusions

Lot size and dwelling standards established by amendments to Statewide Planning Goal 3, ORS 215, and OAR 660, division 33 adopted since the claimants acquired the properties in 1976, do not allow the division of tax lot 2300 into parcels of less than 80 acres in size or allow the development of residential dwellings on the resulting parcels or on tax lot 600 as may have been possible in 1976. Land use laws adopted since 1976, restrict the use of the properties from what could have been done when the properties were acquired by the claimants in 1976. However, it is unclear whether the claimants’ requested level of development complies with the standards in effect when they acquired the property on February 6, 1976.

³ When determining whether land is “generally unsuitable for the production of farm crops and livestock” under ORS 215.213(3) or 215.283(3), the entire parcel or tract must be evaluated rather than a portion thereof. *Smith v. Clackamas County*, 313 Or 519 (1992).

⁴ *Matteo v. Polk County*, 11 Or LUBA 259, 263 (1984) *affirmed without opinion*, 70 Or App 179 (1984) and *Newcomer v. Clackamas County*, 92 Or App 174, *modified* 94 Or App 33 (1988).

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

3. Effect of Regulations on Fair Market Value

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

Findings of Fact

The claim includes an estimate of \$1,560,000 as reduction in the properties' fair market value caused by land use restrictions. This amount is based on the claimants' estimate of a loss of \$20,000 per acre for 78 acres.⁵

Conclusions

As explained in Section V.(1) of this report, the current owners are Arthur and Ann Hop who acquired the properties on February 6, 1976. Under Ballot Measure 37, Arthur and Ann Hop are due compensation for land use regulations that restrict the use of the subject property in a manner that reduces their fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws adopted since 1976, restrict the claimants' ability to divide and develop the properties. The claim estimates the reduction in fair market value due to the restriction to be \$1,560,000.

Without an appraisal or other documentation, and without evidence that the desired level of development would have been allowed when the claimants acquired the properties, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that there has been some reduction in the fair market value of the subject property as a result of land use regulations enacted or enforced by the Commission or the department.

⁵ The Yamhill County Assessor estimated the loss in fair market value at \$800,000, which was the amount used in the Yamhill County staff report and Board Order on the county claim for this property.

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 land use regulations that restrict the ability to divide and develop the properties relative to what would have been allowed in 1976, when the claimants acquired the properties. These provisions include Statewide Planning Goal 3 (Agricultural Lands), and applicable provisions of ORS 215 and OAR 660, division 33, which Yamhill County has implemented through its EFU zone. With the exception of provisions of ORS 215 and Statewide Planning Goal 3 in effect on February 6, 1976, these laws are not exempt under Section 3(E) of Ballot Measure 37. Provisions of ORS 215 and Statewide Planning Goal 3, adopted before February 6, 1976, are exempt under Section 3(E) of the Measure, which exempts laws in effect when the claimants acquired the properties.

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 properties, and these laws are not exempt under Section 3(E) of Measure 37 to the extent they were enacted after the claimants acquired the properties. Provisions of ORS 215, and Statewide Planning Goal 3 in effect when the claimants acquired the properties in 1976, are exempt under Section 3(E) of the Measure and will continue to apply to the properties.

Other laws in effect when the claimants acquired the properties 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 properties 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 properties until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. And, in some cases, some of these laws may be exempt under 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 properties 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 properties.

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 lot 2300 into four parcels or lots, and the use of that property for residential purposes and the ability of the claimants to construct a dwelling on tax lot 600. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject properties by \$1,560,000. 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 because it is not clear whether the claimants' desired level of development would have been allowed when they acquired the property in 1976, 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 Arthur and Ann Hop to use the subject properties for a use permitted at the time they acquired the properties on February 6, 1976.⁶

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 Arthur and Ann Hop's division and development of the 95.4-acre tax lot 2300 and establishment of a dwelling on tax lot 600: applicable provisions of Statewide Planning Goal 3, ORS 215, and OAR 660, division 33, enacted after February 6, 1976. These land use regulations will not apply to Arthur and Ann Hop's use of the subject properties only to the extent necessary to allow the claimants a use permitted at the time they acquired the properties on February 6, 1976.

⁶ An indication of how the applicable Goal 3 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 Yamhill County's acknowledged EFU zone.

2. The action by the State of Oregon provides the state's authorization to the claimants to use their properties subject to the standards in effect on February 6, 1976. On that date, the properties were subject to Statewide Goal 3 and applicable provisions of ORS 215 (1975 editions).

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

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

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

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on September 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.

¹ The Goal 3 standard for the review of land divisions or the establishment of a minimum lot size states:

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

On August 20, 1977, the Commission distributed a policy paper explaining the meaning of the Goal 3 minimum lot size standard (see “Common Questions about Goal #3; Agricultural Lands”, August 30, 1977, as revised and added to July 12, 1979). Further interpretation of the Goal 3 minimum lot size standard can be found in *Meeker v. Clatsop County*, 287 Or 655 (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 the Goal 3 minimum lot size standard (see OAR 660, division 5, specifically rules 15 and 20 effective July 21, 1982).

For further guidance on the interpretation and application of this standard and rule see *Kenagy v. Benton County*, 6 Or LUBA 93 (1982); *Goracke v. Benton County*, 8 Or LUBA 128 (1983); 68 Or App 83 (1984); 12 Or LUBA 128 (1984); 13 Or LUBA 146 (1985); 74 Or App 453 (1985), *rev den* 300 Or 322 (1985); and OAR 660-05-015 and -020 as amended effective June 7, 1986 (repealed effective August 7, 1993).

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