

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

IN THE MATTER OF THE CLAIM FOR)	FINAL ORDER
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M118418
(BALLOT MEASURE 37) OF)	
John and Margaret Bootsma CLAIMANTS)	

Claimants: John and Margaret Bootsma (the Claimants)

Property: Tax lot 200, Township 9S, Range 40W, Section 15, Baker County (the Property)

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

Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to the claimants' division and residential development of the subject property: applicable provisions of Statewide Planning Goal 3, ORS 215, and OAR 660 division 33 enacted after they acquired their respective interests in the subject property. These land use regulations will not apply to John Bootsma's use of the property only to the extent necessary to allow him to use the property for the use described in this report, to the extent that use was permitted at the time he acquired the property on May 15, 1972; and will not apply to Margaret Bootsma's use of the property only to the extent necessary to allow her to use the property for the use described in this report, to the extent that use was permitted when she acquired the property on September 5, 1980.
2. The action by the State of Oregon provides the state's authorization to John Bootsma to use the property for the use described in this report, subject to the standards in effect on May 15, 1972; and to Margaret Bootsma to use the property for the use described in this report, subject to the standards in effect on September 5, 1980. In 1980, the property was subject to compliance with the Statewide Planning Goal 3 and ORS 215, as described above.

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 Conditions 1 and 2 above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the property, it may be necessary for them to obtain a decision under ORS 197.352, from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimants.

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

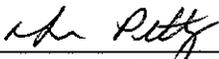
FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD

Dated this 20th day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



Dugan Petty, Deputy Administrator
DAS, State Services Division

Dated this 20th day of March, 2006.

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 ORS 197.352:** 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 (ORS 197.352)
CLAIM FOR COMPENSATION**

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

March 20, 2006

STATE CLAIM NUMBER: M118418

NAMES OF CLAIMANTS: John and Margaret Bootsma

MAILING ADDRESS: 745 Campbell Street
Baker City, Oregon 97814

PROPERTY IDENTIFICATION: Township 9S, Range 40W, Section 15
Tax lot 200
Baker County

DATE RECEIVED BY DAS: May 11, 2005

180-DAY DEADLINE: March 26, 2006¹

I. SUMMARY OF CLAIM

The claimants, John and Margaret Bootsma, seek compensation in the amount of \$1,713,000 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 request compensation or the right to develop approximately 120 acres of their 425.17-acre property.² The property is located immediately south of Sunset Road (Co. Road 903), directly east of Baker City, in Baker 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 John and Margaret Bootsma's division of 120 acres of the 425.17-acre property for

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

² Nothing in the written material provided with the claim indicates a use the claimants seek if compensation is not granted. A telephone conversation with one of the claimants suggested that they may wish to develop about 120 acres on an elevated portion of the subject 425.17-acre property.

residential development: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and OAR 660 division 33. These laws will not apply to the claimants only to the extent necessary to allow John Bootsma to use the property for the use described in this report, to the extent that use was permitted at the time he acquired the property on May 15, 1972; and to allow Margaret Bootsma to use the property for the use described in this report, to the extent that use was permitted at the time she acquired an interest in the property on September 5, 1980. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 6, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, three written comments, evidence or information were received in response to the 10-day notice.³

Two comments do not address whether the claim meets the criteria for relief (compensation or waiver) under ORS 197.352. Comments concerning the effects a use of the property may have on surrounding areas generally are not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waiving a state law.

A third comment is relevant to whether the restriction of the claimants' 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

ORS 197.352(5), requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of 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.

³ The 10-day notice period was suspended for 139 days during the pendency of the *Macpherson v. Dep't of Admin. Servs.*, 340 Or ___, 2006 Ore. LEXIS 104 (February 21, 2006), which suspended all Measure 37 deadlines.

Findings of Fact

This claim was submitted to DAS on May 11, 2005, for processing under OAR 125, division 145. The claim identifies Goal 3 and OAR 660-033-0135 as laws restricting 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

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

Findings of Fact

The materials provided with the claim indicate that claimant John Bootsma acquired the property by Warranty Deed on May 15, 1972. On September 5, 1980, John Bootsma conveyed the property to himself and his wife, Margaret Bootsma. The claimants remain current owners of the property.

Conclusions

The claimants, John and Margaret Bootsma, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). John Bootsma has owned the property since May 15, 1972. Margaret Bootsma has owned the property since September 5, 1980. John Bootsma is a family member, as defined by ORS 197.352(11)(A), as to Margaret Bootsma.

2. The Laws that are the Basis for this Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants’ use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

Findings of Fact

The claim cites Goal 3 (Agricultural Lands) and OAR 660-03-135 as the laws that restrict the use of the property.

The property is currently zoned for Exclusive Farm Use (EFU) by Baker County. The claim is based on applicable state laws applicable to the EFU zoning of the property. The claimants' property is zoned EFU as required by Goal 3, in accord with OAR 660 division 33 and ORS 215 because the claimants' property is "agricultural land" as defined by Goal 3. Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the goal to be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 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 parcel(s) to have farm or non-farm dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new 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.

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.)

Claimant, John Bootsma, acquired an interest in the property May 15, 1972, prior to the establishment of the statewide planning goals and their implementing statutes and rules. The property was not zoned by the county at that time.

Conclusions

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3 and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33, were all enacted after John Bootsma acquired an interest in the subject property in May 1972, and do not allow division and residential development of the property, thereby restricting the use of the property relative to the uses allowed when the property was acquired by John Bootsma in 1972.

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, ORS 197.352(1) requires that any land use regulation described in Section V.(2) of this report must have “the effect of reducing the fair market value of the property, or any interest therein.”

Findings of Fact

The claim includes an estimate of \$1,731,000 as the reduction in the property’s fair market value as a result of current land use restrictions. According to John Bootsma, this figure is based on the claimants’ estimate of the market value of agricultural land of \$2,000 per acre and development land of \$10,000 per acre.

Conclusions

As explained in Section V.(1) of this report, the current owners are John and Margaret Bootsma. John Bootsma acquired the property on May 15, 1972. Under ORS 197.352, John and Margaret Bootsma are due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws adopted since John Bootsma acquired the property restrict division of the subject property. The claimants estimate the reduction in value due to the restrictions to be \$1,731,000.

Without an appraisal based on 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 the subject property as a result of land use regulations enforced by the Commission or the department.

4. Exemptions under ORS 197.352(3)

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

Findings of Fact

The claim is based on land use regulations that restrict the use of the property relative to what would have been allowed in 1972, when the property was acquired by John Bootsma. These provisions include Statewide Planning Goal 3 and applicable provisions of ORS 215 and OAR 660, division 33, which Baker County has implemented through its EFU zone. None of these laws appear to be exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant or claimant’s family acquired the property.

Conclusions

Without a specific development proposal for the property, it is not possible for the department to determine what laws may apply to a particular use of the property, or whether those laws may

fall under one or more of the exemptions under ORS 197.352. It does appear that the general statutory, goal and rule restrictions on residential development and use of farmland apply to the claimants' use of the property, and for the most part these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when John Bootsma acquired the property are exempt under ORS 197.352(3)(E) and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to the claimants' use of the property that have not been identified in the claim. In some cases, it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. And, in some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable given the information provided to the department in the claim. The claimants should be aware that the less information they 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

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced a law that restricts the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the current owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the director must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the division of the subject property into parcels, and the use of the property for residential purposes. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$1,713,000. Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount that the claimants demand for compensation. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow John Bootsma to use the subject property for a use permitted at the time he acquired the property on May 15, 1972, and to allow Margaret Bootsma

to use the property for a use permitted at the time she acquired the property on September 5, 1980.

When Margaret Bootsma acquired interest in the property on September 5, 1980, it was zoned EFU by Baker County. However, the county's EFU 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 197.251.⁴ Since the Commission had not acknowledged Baker County's comprehensive plan and land use regulations, including the EFU zone, when the Margaret Bootsma acquired interest in the property on September 5, 1980, and the property meets the definition of "agricultural land" in the goal, Goal 3 applied directly to property on the date of acquisition.⁵

In 1980, 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 (1979 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). In 1980, ORS 215.263 did not provide for the creation of a small parcel for a non-farm dwelling separate from these provisions.⁶

Thus, the opportunity to divide the property when Margaret Bootsma acquired interest in 1980, was limited to land divisions 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.⁷)

As for dwellings allowed in an EFU zone, in 1975, ORS 215 and EFU zoning required by Goal 3 allowed farm dwellings if determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1979 edition). Before a farm dwelling could be established on agricultural land, the farm use to which the dwelling relates must "be existing."⁷ Further,

⁴ The Commission acknowledged the Baker County Comprehensive Plan and land use regulations as complying with the statewide planning goals on April 24, 1986 (Acknowledgment Order 86-ACK-038).

⁵ Statewide Planning Goal 3 was applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of the county's Goal 3 program on February 9, 1983. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). 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); *Kenagy v. Benton County*, 115 Or App 131 (1992).

⁶ Compare ORS 215.263 (1973 edition) with the current version of ORS 215.263.

⁷ *Newcomer v. Clackamas County*, 92 Or App 174, modified 94 Or App 33 (1988); *Matteo v. Polk County*, 11 Or LUBA 259, 263 (1984), affirmed without opinion 70 Or App 179 (1984).

approval of a farm dwelling required that the dwelling be situated on a parcel wholly devoted to farm use and if on existing parcel, the dwelling had to be on a parcel appropriate for the continuation of the existing commercial agricultural enterprise within the area. ORS 215.213(3) (1979 edition) authorized a non-farm dwelling only where the dwelling was compatible with farm uses, consistent with the intent of ORS 215.243, did not interfere seriously with accepted farming practices on adjacent lands, did not materially alter the stability of the land use pattern for the area, and was situated on land generally unsuitable for production of farm crops and livestock.⁸

Conclusion

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to the claimants' division and residential development of the subject property: applicable provisions of Statewide Planning Goal 3, ORS 215, and OAR 660 division 33 enacted after they acquired their respective interests in the subject property. These land use regulations will not apply to John Bootsma's use of the property only to the extent necessary to allow him to use the property for the use described in this report, to the extent that use was permitted at the time he acquired the property on May 15, 1972; and will not apply to Margaret Bootsma's use of the property only to the extent necessary to allow her to use the property for the use described in this report, to the extent that use was permitted when she acquired the property on September 5, 1980.
2. The action by the State of Oregon provides the state's authorization to John Bootsma to use the property for the use described in this report, subject to the standards in effect on May 15, 1972; and to Margaret Bootsma to use the property for the use described in this report, subject to the standards in effect on September 5, 1980. In 1980, the property was subject to compliance with the Statewide Planning Goal 3 and ORS 215, as described above.
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 Conditions 1 and 2 above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c)

⁸ When determining whether land is "generally unsuitable for the production of farm crops and livestock" under ORS 215.213(3), the entire parcel or tract must be evaluated rather than a portion thereof. *Smith v. Clackamas County*, 313 Or 519 (1992).

those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the property, it may be necessary for them to obtain a decision under ORS 197.352, from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on October 14, 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.

ⁱ 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*, 287 Or 665 (1979); *Jurgenson v. Union County*, 42 Or App 505 (1979); *Alexanderson v. Polk County*, 289 Or 427, *rev den* 290 Or 137 (1980); and *Thede v. Polk County*, 3 Or LUBA 335 (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), *rev den and remanded*, 68 Or App 83 (1984), *on remand* 12 Or LUBA 128 (1984); *Goracke v. Benton County*, 13 Or LUBA 146 (1985), *affirmed* 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).