

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. M118407  
(BALLOT MEASURE 37) OF )  
Rodger Ritchey, CLAIMANT )

Claimant:     Rodger Ritchey (the Claimant)

Property:     Tax lot 2001, T 1N, R 4W, S 15, Washington County (the Property)

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

Claimant submitted the Claim to the State of Oregon under 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 Rodger Ritchey's division of the property into two 10-acre parcels or his development of a residential dwelling on one of those parcels: applicable provisions of Statewide Planning Goal 3, ORS 215 and OAR 660 division 33 enacted after March 25, 1980. These land use regulations will not apply to Mr. Ritchey's use of his property for the use described in this report, and only to the extent necessary to allow him a use permitted at the time he acquired the property on March 25, 1980.
2. The action by the State of Oregon provides the state's authorization to the claimant to use his property for the use described in this report subject to the standards in effect on March 25, 1980. On that date, the property was subject to applicable provisions of ORS 215 and Goal 3 then in effect.

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

4. Any use of the property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to 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 claimant to use the property, it may be necessary for him 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 claimant 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 claimant.

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under 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.

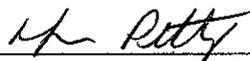
FOR DLCD AND THE LAND CONSERVATION  
AND DEVELOPMENT COMMISSION:



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:** M118407

**NAME OF CLAIMANT:** Rodger Ritchey

**MAILING ADDRESS:** 43820 Southwest Hiatt Road  
Forest Grove, Oregon 97116

**PROPERTY IDENTIFICATION:** Township 1N, Range 4W, Section 15  
Tax lot 2001  
Washington County

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

**180-DAY DEADLINE:** March 25, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

The claimant, Rodger Ritchey, seeks compensation in the amount of \$275,000 for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the 20-acre property into two 10-acre parcels and to develop a residential dwelling on one of those parcels. The property is located on Northwest Ganna Way, in Forest Grove, in Washington 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 Mr. Ritchey's division of the property into two 10-acre parcels and his development of a residential dwelling on one of those parcels: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and OAR 660 division 33 enacted after March 25, 1980. These laws will not apply to the claimant only to the extent necessary to allow Mr. Ritchey to use the property for the use described in this report, and only to the extent that use was permitted

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<sup>1</sup> 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).

at the time he acquired the property in 1980. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On June 22, 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, evidence or information were received in response to the 10-day notice.<sup>2</sup>

The comment is relevant to whether a state law restricts the claimant's use of the property and whether the restriction of the claimant's use of the property reduces the fair market value of the property. The comment has been considered by the department in preparing this report. (See the comment letter 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.

#### **Findings of Fact**

This claim was submitted to DAS on May 10, 2005, for processing under OAR 125 division 145. The claim identifies Goal 3 as the law that restricts 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.)

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<sup>2</sup> 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.

## **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 claimant, Rodger Ritchey, acquired the subject property on March 25, 1980, as reflected by a Land Sale Contract included with the claim. The property was conveyed to the Rodger Ritchey Trust on October 18, 2001 as reflected by a Bargain and Sale Deed included with the claim. The Rodger Ritchey Trust is a revocable living trust. Transfer of the property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

A copy of a Washington County property tax statement dated November 2003 indicates that the Rodger Ritchey Trust is the current owner of the subject property.

### **Conclusions**

The claimant, Rodger Ritchey, is an “owner” of the subject property, as that term is defined by ORS 197.352(11)(C), as of March 25, 1980.

### **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 claimant’s use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

### **Findings of Fact**

The claim states that land use regulations “Limits non-farm dwellings.” Additional information submitted by the claimant’s representative indicates that state laws have restricted the property so that it cannot be subdivided into 10-acre lots.

The claim is based, in part, on Washington County’s current Agriculture and Forest, 20 acre minimum (AF-20) district and the applicable provisions of state law that require such zoning. The claimant’s property is zoned AF-20 as required by Statewide Planning Goal 3 (Agricultural

Lands), in accord with OAR 660, division 33, and ORS 215 because the claimant's property is "agricultural land" as defined by Goal 3. Goal 3 became effective on January 25, 1975, and required that Agricultural Lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.780 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 215.213.

OAR 660-033-0130(4)(e) (applicable to non-farm dwellings in marginal lands counties) became effective on August 7, 1993.

The claimant acquired the subject property in 1980. At that time, Washington County's AF-20 zone had not been acknowledged by the Commission for compliance with the Statewide Planning Goals under the standards for state approval of local comprehensive plans and land use regulations pursuant to ORS 215.250 and 197.251. Because the Commission had not acknowledged Washington County's comprehensive plan and land use regulations, certain site-specific goal provisions, including Goal 3, applied directly to the subject property when the claimant acquired it in 1980.<sup>3</sup>

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 "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). ORS 215.263 did not provide for the creation of a small parcel for a non-farm dwelling separate from the provisions just noted.<sup>4</sup> Thus, the opportunity to divide the property in

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<sup>3</sup> Statewide Planning Goal 3 became effective on January 25, 1975, and was applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of local plans. See *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 569 (1977), *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978), *Jurgenson v. Union County*, 42 Or App 505 (1979), *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 the Commission, the Statewide Planning Goals and implementing rules no longer directly applied to such local land use decisions (See *Byrd v. Stringer*, 295 Or 311 (1983). However, the applicable statutes continue to apply and insofar as the local implementing provisions are materially the same as the rules, the local provisions must be interpreted consistent with the substance of the rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

<sup>4</sup> Compare ORS 215.263 (1973 edition) with the current version of ORS 215.263.

1980, 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<sup>1</sup>.)

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

Before a farm dwelling could be established on Agricultural Land, the farm use to which the dwelling relates must "be existing."<sup>5</sup> Further, approval of a farm dwelling required that the dwelling be situated on a parcel wholly devoted to farm use. 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.<sup>6</sup>

No information has been provided showing that the claimant's request to divide the property into two 10-acre parcels and develop a residential dwelling on one of those parcels complies with either of the applicable partition or dwelling standards under Goal 3, ORS 215.213 (1979 Edition) or OAR 660 division 33 in effect at the time the claimants acquired the property in 1980.

### **Conclusions**

Current division and dwelling standards enacted after the claimant acquired the property restrict the use of the property relative to the uses allowed when the property was acquired. In 1980, the property was subject to both the County's ordinances and the requirements of Goal 3 and ORS 215 then in effect. The claim does not establish, and it is not clear whether or to what extent the claimant's requested level of development would have been permitted at the time the claimant acquired the property.

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

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<sup>5</sup> *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).

<sup>6</sup> 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).

### **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 \$275,000 as the reduction in the property’s fair market value, due to current regulations. This estimate is based on the claimant’s personal experience as a land appraiser.

#### **Conclusions**

As explained in Section V.(1) of this report, the current owner is Rodger Ritchey who acquired the property on March 25, 1980. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws adopted since the claimant acquired the property restrict division of the subject property. The claimant estimates the reduction in value due to the restrictions to be \$275,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that there has been some reduction in the fair market value of the subject property as a result of land use regulations enforced by the Commission or the department.

### **4. Exemptions under 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 state land use regulations that restrict the use of the property relative to what would have been allowed in 1980 when the property was acquired by Rodger Ritchey. These provisions include Statewide Planning Goal 3 (Agricultural Lands) and applicable provisions of ORS 215 and OAR 660 division 33 which Washington County has implemented through its AF-20 zone. With the exception of provisions of Goal 3 and ORS 215 in effect on March 25, 1980, none of these laws appear to be exempt under ORS 197.352(3)(E), which exempts laws in effect at the time the claimant acquired the property. Provisions of Goal 3 and ORS 215 adopted before March 25, 1980, are exempt under ORS 197.352(3)(E).

## **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 farm land apply to the claimant's use of the property, and for the most part these laws are not exempt under ORS 197.352(3)(E). Provisions of Goal 3 and ORS 215 in effect when the claimant acquired the property in 1980 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimant acquired the property are also exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's use of the property. There may be other laws that continue to apply to the claimant's use of the property that have not been identified in the claim. In some cases, it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. And, in some cases, some of these laws may be exempt under 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 claimant has 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 claimant should be aware that the less information he has provided to the department in his claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to his use of the property.

## **VI. FORM OF RELIEF**

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 claimant's ability to divide the property into two 10-acre parcels and to develop a residential dwelling on one of those parcels. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$275,000. 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, 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, authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Rodger Ritchey to use the subject property for a use permitted at the time she acquired the property on March 25, 1980.

### **Conclusion**

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Rodger Ritchey's division of the property into two 10-acre parcels or his development of a residential dwelling on one of those parcels: applicable provisions of Statewide Planning Goal 3, ORS 215 and OAR 660 division 33 enacted after March 25, 1980. These land use regulations will not apply to Mr. Ritchey's use of his property for the use described in this report, and only to the extent necessary to allow him a use permitted at the time he acquired the property on March 25, 1980.
2. The action by the State of Oregon provides the state's authorization to the claimant to use his property for the use described in this report subject to the standards in effect on March 25, 1980. On that date, the property was subject to applicable provisions of ORS 215 and Goal 3 then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.
4. Any use of the property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to 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 claimant to use the property, it may be necessary for him 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 claimant 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 claimant.

## 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.

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<sup>i</sup> The Goal 3 standard for the review of land divisions or the establishment of a minimum lot size states:

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

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